Elmer's Case Revisited: The Problem of The Murdering Heir

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INTRODUCTION

The setting is perfect for a Halloween night in the late 1800s. The moon reappears from dense clouds, and hounds begin to howl. The wind is wailing through the trees, making those frightening sounds that are mandatory for every horror film. Sitting in the dark library of the "mandatory" ancient manor is a wealthy but decrepit gentleman. An eccentric, old grandfather is taking pleasure in revoking his will to completely disinherit Elmer,[1] his overly anxious heir. Suddenly, there is a creaking sound coming from the hall. The library doors burst open, and a loud gunshot blasts through the room. The grandfather is dead, and his grandson Elmer stands shaking with the smoking gun in his hand.

An open and shut case of murder? Probably. But the far more interesting question is whether Elmer can inherit from his grandfather. Or, put more generally, can a person who slays another prosper in any way from the death of his or her victim? This was the basic issue presented in *Riggs v. Palmer*.[2] Relying on an ancient legal principle that a person cannot benefit from his or her wrongdoing, and noting the lack of precedent directly on point, the *Riggs* court denied the murderer his inheritance.[3] The *Riggs* decision opened the door to severe criticism, the critics claiming that the court lacked authority to support its decision and that the court was bound by statutory law which required that an heir inherit.[4] As one observer noted, however:

[t]his strange case was a new kettle of fish. Yet, it is clear from . . . [the]

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1. "Elmer" is the name of the defendant in Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889), in which similar facts were presented. The introduction to this article was inspired by D'Amato, *Elmer's Rule: A Jurisprudential Dialogue*, 60 IOWA L. REV. 1129 (1975). Professor D'Amato creates a fictional dialogue between Elmer and his attorney in which they discuss the question whether an heir under a will would still get the property even if he killed the testator. The discussion was invented to investigate the case of *Riggs v. Palmer*, an early American case that took the position that a murderer who was a legatee could not take under his ancestor's will.

2. Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889).

3. Because of the dearth of case law on point, the court in *Riggs v. Palmer* examined various treatises, writings by such famous scholars as Aristotle and Blackstone, Roman law, and civil law; even the Napoleonic Code and the Civil Code of Lower Canada were discussed. Riggs v. Palmer, 115 N.Y. 506, 511-13, 22 N.E. 188, 189-90 (1889).

4. *See, e.g.*, Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914). Rejecting the *Riggs* decision, the court stated that "where there are explicit rules governing the descent of property by statute . . . the one upon whom the law casts the property cannot, because of the murder by him of the ancestor or testator, be divested of it by the court." *Id.* at 185, 106 N.E. at 787.

> opinion that the judge was revolted . . . by the notion that a murderer could inherit under the will of the man he had murdered; . . . [the judge] was struggling to deny him, if he could even if he had to quote from the old cookbook.[5]

The *Riggs* holding was especially surprising because it was inconsistent with a case decided one year previously, *Owens v. Owens*.[6] Confronted with a murdering spouse, the *Owens* court refused to make an exception to the statutory right to receive dower, stating that creating statutory exceptions is solely within the power of the legislature.[7] Scholars studying the *Riggs* decision have therefore instinctively asked, "[W]hat business does a court have in surprising anyone?"[8] More importantly, what business does anyone have in examining the succession laws of American courts in the 1880s? The answer is because the problem of a murdering heir or legatee has never been adequately treated by courts or legislatures.[9] In fact, the issue has distressed jurisprudential scholars from 1870 to the present.[10]

Therefore, the purpose of this Article is to examine the problems that such slayers have presented to the courts and the fundamental legal principles that have guided courts in their decisions. Additionally, this discussion will outline the legislative response to the problem and analyze the current status and trends of legislation on this subject. Finally, the problems posed by legislative response will be examined and a statutory solution to these problems will be proposed.

I. HISTORICAL BACKGROUND—THE COURTS' RELUCTANCE TO DENY A SLAYER'S INHERITANCE

Prior to any statutory prohibitions to the contrary, property passed according to the ancient common law doctrines of attainder,[11] forfeiture and corruption of blood,[12] and escheat.[13] As a result, title to a felon's prop-

5. R. TRAVER, THE JEALOUS MISTRESS 65 (1967).

6. 100 N.C. 240, 6 S.E. 794 (1888).

7. *Id.* at 242, 6 S.E. at 795.

8. D'Amato, *Elmer's Rule: A Jurisprudential Dialogue*, 60 IOWA L. REV. 1129 (1975).

9. Although attempts to solve the problem of the slayer and his bounty vary with jurisdictions, the history of the problem is detailed in Reppy, *The Slayer's Bounty—History of the Problem in Anglo-American Law*, 19 N.Y.U. L.Q. REV. 229 (1942).

10. *Id. See* note 1 *supra.*

11. Attainder is "that extinction of civil rights and capacities which took place whenever a person who had committed treason or felony received [the] sentence of death for his crime." BLACK'S LAW DICTIONARY 116 (5th ed. 1979). The effect of attainder is that the felon's estate is forfeited to the sovereign. *See* Caldwell v. Hill, 179 Ga. 417, 428, 176 S.E. 381, 386 (1934). Although case law is sparse on the subject of forfeiture, there is no question that it was applied in cases of felonious conduct. In Brooke v. Warde, 3 Dyer 310b, 73 Eng. Rep. 702 (Q.B. 1572), a testator, by will, devised land to another who later murdered the testator. The court, deciding the case on the question of oral revocation of the will, described the devisee as one who "was attainted of murder, and hanged." *Id.* at 703. Blackstone's list of the offenses that induce a forfeiture of lands and tenaments includes felony. 2 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 267 (3d ed. 1768).

12. Corruption of blood was part of the consequence of attainder. Under this doctrine, the attainted person could not inherit property, retain the property he owned, or transmit property to heirs by descent. BLACK'S LAW DICTIONARY 311 (5th ed. 1979). *See* Avery v. Everett, 110 N.Y. 317, 324, 18 N.E. 148, 150-51 (1888).

13. Added to the concepts of attainder and corruption of blood was the law of feudal escheat, in

erty passed to the state.[14] This solved the problem of the slayer's bounty because neither the slayer nor his heirs received the bounty. Furthermore, the slayer lost any bounty he owned, and his family was left with nothing.[15]

Criticism of these doctrines and the disappearance of the feudal system that supported them led to the enactment of the Forfeiture Act of 1870, completely abolishing the doctrines.[16] This Act provided that ". . . [n]o confession, verdict, . . . conviction, or judgment of or for any treason . . . shall cause any attainder or corruption of blood, or any forfeiture or escheat."[17] Thus, in *Cleaver v. Mutual Reserve Fund Life Association*,[18] the court could not automatically apply the forfeiture doctrine as had been done before passage of the act. In *Cleaver*, the wife's administrator was allowed to recover insurance proceeds on the life of the husband whom she had killed.[19] The solution to the murdering heir problem was, therefore, not as simple as it had been in the past; forfeiture was no longer a viable solution, and judges had to look elsewhere for support if they wanted to deny the slayer his bounty. This was the problem presented in *Owens v. Owens*,[20] in which the wife of the deceased was convicted of being an accessory to his murder. The *Owens* court, unable to apply the doctrines of attainder, forfeiture, or escheat, allowed the wife her statutory right to dower. Troubled by the result, the court held that ". . . while the law gives the dower . . . there is no provision for its forfeiture for crime, however heinous it may be."[21]

The shocking result of allowing a slayer to share in the victim's property did not convince most courts that the conclusion was not jurisprudentially sound. In the absence of a statute, the majority of cases have upheld such takings.[22] Most courts adhering to this view have refused to

which the attainted felon breached the implied condition in the donation of the feud and forfeited the property to the lord. *See* Reppy, *The Slayer's Bounty—History of the Problem in Anglo-American Law*, 19 N.Y.U. L.Q. REV. 229, 230-34 (1942). For a general discussion of collateral consequences of a felony conviction in Illinois *see* Decker, *Collateral Consequences of a Felony Conviction in Illinois*, 56 CHI. KENT L. REV. 731 (1980).

14. A. REPPY & L. TOMPKINS, HISTORICAL AND STATUTORY BACKGROUND OF THE LAW OF WILLS 89 (1928).

15. One example of the atrocious results of attainder was the act of attainder passed in 1688 by the Parliament of James II. *See* T. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 260 n.1 (1868). Under this act, approximately two to three thousand people were attainted for political reasons; their property was confiscated and they were to be sentenced to death if they failed to appear at a specific time. *Id.* "And, to render the whole proceeding as horrible in barbarity as possible, the list of the prescribed was carefully kept secret until after the time fixed for their appearance." *Id.*

16. Forfeiture Act, 1870, 33 & 34 Vict., c. 23 (1870). Several earlier statutes had partially abolished the application of these doctrines. For example, one statute provided that no attainder for felony would take place except in such cases as the crime of High Treason, or of Petit Treason or Murder. 54 Statutes-at-Large, c. 145, 742. Thus, the statute abolished forfeiture for felonies other than those mentioned in it.

17. Forfeiture Act, 1870, 33 & 34 Vict. c. 23.

18. 1 Q.B. 147 (1892).

19. *Id.*

20. 100 N.C. 240, 6 S.E. 794 (1889).

21. *Id.* at 241, 6 S.E. at 794.

22. T. ATKINSON, LAW OF WILLS 153 (2d ed. 1953). *See* McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906); Shellenberger v. Ransom, 41 Neb. 631, 59 N.W. 935 (1894); *In re* Carpenter's Estate, 170 Pa. 203, 32 A. 637 (1895); Murchison v. Murchison 203 S.W. 423 (Tex. Civ. App. 1918).

make exceptions to the statutes of wills, descent and distribution, and, in some instances, statutory dower.[23] Other courts have refused to add penalties to the commission of crime when criminal codes set out the specific punishment for a particular crime.[24] Finally, some courts have cited the United States Constitution's prohibition against forfeiture as the reason for upholding a wrongdoer's taking.[25] Yet, the grounds for refusing to divert from statutory rules that dispose of property do not justify the incongruant result of allowing slayers their bounty.

A. *Judicial Legislation*

An examination of various courts' decisions shows this reasoning to be weak at best. First, there is a bit of old fashioned judicial reneging: the "this is not my job; send it to the legislature" approach. Although the legal philosophy dominant when our government was established did not contemplate judicial legislation,[26] times have changed and judges do legislate.[27] A good example of how times change and judicial decisions correspondingly respond is case law on the right of privacy. In right of privacy cases, courts have responded to changes in American society and "the demands of the problems of the present day."[28] The idea that a court has a responsibility to consider the evolution of community attitudes when making decisions is not a new one. In fact, the attempt of the American legal system to adjust to far-reaching social and economic developments has forced scholars to reconsider the concept of the judicial function.[29]

Courts legislate by overruling decisions; if not, such repulsive doctrines as "separate but equal" would still be haunting us.[30] Courts also legislate when, for example, they find new individual rights under the "penumbra" of the Bill of Rights.[31] For example, the United States Supreme Court has stated:

> [t]he association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parent's choice—

23. T. ATKINSON, LAW OF WILLS 153-54 (2d ed. 1953). *See, e.g.*, Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906).

24. Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950).

25. *See, e.g.*, Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950). U.S. CONST. art. 3, § 3, cl. 2 provides that "Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work corruption of Blood, or Forfeiture except during the Life of the Person attainted." Cases which refuse to hold contrary to the Constitution include Crumley v. Hall, 202 Ga. 588, 43 S.E.2d 646 (1947), and Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1889).

26. F. CAHILL, JUDICIAL LEGISLATION V (1950).

27. *Id.*

28. Roe v. Wade, 410 U.S. 113, 165 (1973). Originally, our Constitution was based upon the theory that judges merely apply the law, but do not create it. In the past seventy or eighty years, however, there has developed an increasingly important body of legal theory which holds that judges not only can legislate, but also ought consciously to do so. F. CAHILL, JUDICIAL LEGISLATION V (1950).

29. *See* F. CAHILL, JUDICIAL LEGISLATION (1950).

30. Plessy v. Ferguson, 163 U.S. 537 (1896), *overruled*, Brown v. Board of Educ., 347 U.S. 483 (1954).

31. Griswold v. Connecticut, 381 U.S. 479, 483 (1965).

> whether public or private or parochial—is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.[32]

The first amendment did not cleverly hide these rights. Rather, the Court ingeniously found them by examining ancient attitudes, the hippocratic oath, the common law, English statutory law, American law, and the positions of the American Medical Association, the American Public Health Association, and the American Bar Association.[33] If courts can overrule decisions and find new constitutional rights, they can make exceptions to statutory rules to prevent harsh and unjust results. The *Owens* court could have responded to changes in circumstances, just as the "privacy" cases have done. The change in the murdering heir circumstances was the abolishment of forfeiture. Instead, the court in *Owens* noted that there was neither a statutory provision nor case law supporting forfeiture.[34] Hence, the court stated that such circumstances afforded a strong presumption against forfeiture, even though the result was to reward crime.[35]

Such a result from these "dispassionate oracles of justice,"[36] of course, would disturb the legal community at least as much as the prospect of courts surprising people by rewarding a murdering heir.[37] As one writer commented, "[t]he most striking, and certainly most gruesome, of the illustrations of the inflexible nature of title by descent have been the cases involving inheritance by murderers."[38] Justice Cardozo expressed that same sentiment when he stressed that "the social interest served by refusing to permit the criminal to profit by his crime is greater than that served by the preservation and enforcement of legal rights of ownership."[39]

In Elmer's case, the court is not construing a constitution and, therefore, must literally apply applicable statutory law. No one has ever suggested, however, that courts must bury their heads in sand rather than use common sense to construe statutes. The *Owens* court presumed that without specific judicial or legislative authority, the court could not provide relief.[40] But another presumption was ignored—the presumption against injustice. One presumption used in statutory construction is to presume that the legislature did not intend to violate a settled priniciple of natural justice.[41] Furthermore, in regard to the general principle of avoid-

32. *Id.* at 482.
33. Roe v. Wade, 410 U.S. 113, 130-47 (1973).
34. Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888).
35. *Id.*
36. *See* F. CAHILL, JUDICIAL LEGISLATION 3 (1950).
37. *See, e.g.*, Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888).
38. Lauritzen, *Only God Can Make An Heir*, 48 NW. L. REV. 568, 580 (1963).
39. B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 43 (1921).
40. Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888).
41. H. BLACK, HANDBOOK ON THE CONSTITUTION AND INTERPRETATION OF THE LAWS 122 (2d ed. 1911).

ing injustice and absurdity, any statutory construction that enabled a person to profit by his own wrong should most certainly be rejected.[42] Thus, if a statute should not be construed to allow a person to profit from his wrongdoing, a murderer should not profit from his or her wrongful act.

Another principle of statutory construction ignored by *Owens* and similar cases[43] is a court's duty to ascertain the meaning and intention of the legislature.[44] Had the *Owens* court investigated the legislative intent of the dower statute, it is probable that they would have found against the murdering spouse. In fact, as a result of the *Owens* decision, the North Carolina legislature amended the dower statute to prevent a wife from receiving dower when she had feloniously slain her husband.[45] Rules of statutory construction and the reality of judicial legislation provide ample authority to reach a more just result.

B. *Criminal Law—The Only Punishment for the Slayer?*

Courts have also relied on the criminal law to grant a slayer his or her bounty. These courts note that a denial of inheritance to a slayer is an additional punishment beyond the punishment imposed by criminal law.[46] They argue, therefore, that public policy demands that a slayer be punished only once.[47]

This argument, however, is nothing more than a judicial cop-out. It fails to recognize the co-existing and co-equal public policy favoring compensation of victims. Although the victim's interest in compensation was historically supplanted by the state's interest in penalizing the criminal[48] and the judiciary's interest in ensuring a fair trial and suitable defense,[49] more recent attention has been focused on the victim.[50]

The victim is no longer forgotten; and the victim and his or her family should be compensated. Many jurisdictions, including foreign countries[51]

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42. G. ENDLICK, A COMMENTARY ON THE INTERPRETATION OF STATUTES 355 (1888). The example given by Endlick regarded a statute that authorized justices to discharge an apprentice under certain circumstances when the master appears before them. *Id.* This statute was construed to also allow the discharge of an apprentice if the master willfully refused to appear. *Id.* The reason given by the court for this construction was to prohibit the master from taking advantage of his own obstinacy. *Id.* at 355-56. Here the court stated that "[i]t would be very hard that, supposing the master . . . ran away, the apprentice should never be discharged." *Id.* at 356.

43. *See* note 3 *supra.*

44. *See* G. ENDLICK, A COMMENTARY ON THE INTERPRETATION OF STATUTES 328 (1888).

45. N.C. GEN. STAT. § 4099 (1939).

46. For example, in Welsh v. James, 408 Ill. 18, 95 N.E.2d 872 (1950), the court stated that "[o]ur Criminal Code makes unjustifiable homicide punishable by death, or by imprisonment in the penitentiary. These provisions are declarations of the public policy of the State. Such declarations of public policy are final and binding on the judicial department of government." *Id.* at 25, 95 N.E.2d at 875.

47. *Id.* at 24, 95 N.E.2d at 875.

48. CONSIDERING THE VICTIM ix, x (J. Hudson and B. Galaway ed. 1975).

49. *Id.* at 437.

50. *See* Wright, *What About the Victims, reprinted in* CONSIDERING THE VICTIM 392-94 (J. Hudson and B. Galaway ed. 1975); Lamborn, *Toward a Victim Orientation in Criminal Theory*, 22 RUTGERS L. REV. 735 (1968).

51. *See, e.g.*, CMND. No. 2323 at 3-5 (Great Britain); Criminal Injuries Compensation Act of 1963, Stat. N.Z. 134 (1963) (New Zealand); Criminal Injuries Compensation Act of 1967, N.S.W., Act

and almost one-half of the states,[52] have victim compensation plans. In addition, both the House of Representatives and Senate are currently considering proposals for victim compensation.[53] As former Senator Mansfield stated, "the point has been reached where we must give consideration to the victim of crime—to the one who suffers because of crime. For him, society has failed miserably . . . [and s]ociety has an obligation."[54]

Therefore, if courts consider public policy for criminal prosecutions, they cannot ignore the public policy favoring victim compensation. If the *Owens* court had considered this co-equal public policy, it would not have granted the slayer her dower rights. In fact, consideration of this public policy will also prevent the slayer and his or her descendants from receiving any part of the victim's property. The courts should not hand over the spoils of the crime to the criminal.

Refusal to grant the slayer his bounty follows current public policy. Neither criminal codes nor compensatory statutes support a system that rewards crime. In addition, the public's concern over the increasing crime rate[55] indicates the public's demand that criminals should not benefit from their actions. Finally, and most importantly, in jurisdictions in which statutes do not allow a criminal to benefit from his or her actions, the statutes are not considered penal.[56] Thus, they are not contrary to the criminal code, since they have nothing to do with punishing the criminal.[57]

C. *Constitutionality*

Another rationale for granting the slayer his or her bounty is that constitutional provisions prohibit forfeiture. Some courts argue that preventing the murderer from taking would perpetuate the ancient doctrines of attainder and forfeiture,[58] and any statute prohibiting the slayer from taking his victim's property would be unconstitutional.[59] The majori-

No. 14 (1967) (Australia); The Criminal Injuries Compensation Act of 1967, Sask. Stat. c. 84 (1967) (Canadian Province of Saskatchewan); The Criminal Injuries Compensation Act of 1970, Man. Stat. c. 56 (1970) (Canadian Province of Manitoba).

52. R. MEINORS, VICTIM COMPENSATION xiii (1978). *See, e.g.*, CAL. WELF. & INST. CODE §§ 1500.02, 11211 (West 1966); N.Y. EXEC. LAW §§ 620-635 (McKinney Supp. 1971); MD. ANN. CODE § 26A (Supp. 1971); HAWAII REV. STAT. § 351 (1968); MASS. GEN. LAWS ANN. ch. 258A (West Supp. 1971); NEV. REV. STAT. § 217 (1969).

53. *See, e.g.*, S. 2155, 89th Cong., 1st Sess. (1965); H.R. 4257, 95th Cong. 1st Sess. (1979).

54. *Public Pay for Crime Victims: An Idea That Is Spreading*, U.S. NEWS AND WORLD REP., April 5, 1971, at 40.

55. *See generally* LAW ENFORCEMENT ASSISTANCE AD., U.S. DEP'T OF JUSTICE, PUBLIC OPINION ABOUT CRIME (1977).

56. Hamblin v. Marchant, 103 Kan. 508, 175 P. 678 (1918).

57. *Id.* at 510, 175 P. at 679.

58. G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 478 (rev. 2d ed. 1978) Thus, courts have reasoned that "[a]lthough a theory of cutting a murderer out of any benefits resulting from his crime appeals to the court's sense of justice, it cannot be overlooked that the Legislature has the power to declare a rule of descents." Hagan v. Cone, 21 Ga. App. 416, 417, 94 S.E. 602, 603 (1917). The *Hagan* court then further discussed the constitutional prohibition against forfeiture. *Id.* at 416-20, 94 S.E. at 602-03. *See also* Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906).

59. *See* Hamblin v. Marchant, 103 Kan. 508, 175 P. 678 (1918).

ty view, however, holds that this result does not work a forfeiture because nothing was taken from the person convicted.[60] Instead, courts have stated that the legislature has entire control over the devolution of property; the prohibition of slayers taking their victims' property is merely a statutory exception.[61]

These courts analyze the nature of the slayer's right to the property and state there can be no forfeiture unless there is an interference with a vested right;[62] that the right to inherit is an expectant and not a vested right.[63] For example, in *Perry v. Strawbridge*,[64] the court held that prohibiting a murderer from inheriting was not a forfeiture because the statute simply prohibited him from acquiring property in an unlawful manner. The court also noted that because the statute did not prohibit the murderer's heirs from taking his property, no constitutional rights were violated.[65] In *Box v. Lanier*,[66] the court held that because the murderer had never acquired an estate in the victim's property, there was nothing upon which the constitutional provisions could operate. Therefore, denying a slayer an inheritance or other benefit from a wrongdoing is constitutional.

II. THE COMMON LAW APPROACH: A SLAYER'S RIGHTS TO HIS OR HER BOUNTY UNDER PROPERTY LAW

Although denial of an expected right is not a forfeiture, interests such as tenancy by entirety and joint tenancy pose problems because these rights and all their incidents may be expectant or vested. Had Elmer murdered someone with whom he shared these rights, he probably would claim that the rights vested before the murder. Accordingly, to deprive him of the right of survivorship, which belongs to a joint tenant,[67] may work a forfeiture. Nevertheless, when faced with these property interests and with insurance policies naming a slayer a beneficiary, courts have attempted to resolve the issues.

A. *Joint Tenancy*

The essence of a joint tenancy is the existence of a single estate in which two or more persons share property equally and have the right of

60. *Id.*

61. *Id.*

62. Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Box v. Lanier, 112 Tenn. 393, 79 S.W. 1042 (1904).

63. *See generally* Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Box v. Lanier, 112 Tenn. 409, 79 S.W. 1042 (1904).

64. 209 Mo. 621, 108 S.W. 641 (1908).

65. *Id.* Here, the court is referring to the prohibited practice of "attainder," which prohibits heirs of a criminal from taking by descent and distribution.

66. 112 Tenn. 409, 79 S.W. 1042 (1904). Not all courts have agreed with the *Box* decision. In Eversole v. Eversole, 169 Ky. 793, 185 S.W. 487 (1916), the court refused to apply *Box*. Stating that "the property rights of a widow in the estate of her deceased husband are controlled entirely by statute," the court held that statutory rights cannot be defeated by a common law principle such as the one forbidding a person from taking advantage of his own wrong. *Id.* at 794, 185 S.W. at 488.

67. J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 99 (2d ed. 1975).

survivorship when one of the tenants dies.[68] Traditionally, the right of survivorship has not been considered to be a type of future interest, because a fictitious entity enjoys the estate during the joint tenants' lives.[69] Thus, the right of survivorship dictates that when a joint tenant dies, his or her individual right to the enjoyment of the property ceases and his heirs or devisees take nothing because all his interest in the estate has ceased to exist; the estate continues in the surviving joint tenant.[70]

The notion that joint tenants enjoy vested rights has made courts hesitant to deprive a slayer of his or her right of survivorship in cases in which one joint tenant slays the other.[71] As one court reasoned, a characteristic of joint tenancy is the right of survivorship and, under the laws of real property, a joint tenant does not acquire anything new upon another tenant's death.[72] Rather, the estate of a surviving joint tenant is merely freed from participation of the other tenant.[73]

Another basis for allowing the murdering joint tenant his right of survivorship is statutory. For example, in *United Trust Co. v. Pyke*,[74] the court noted that the property act of its jurisdiction did not restrict the right of the surviving joint tenant because of criminal conduct.[75] In *Oleff v. Hodapp*,[76] in which the property held in joint tenancy was a building and loan association account, the court held that the joint tenancy interests had been created by an inter vivos contract subject only to the general code of its jurisdiction. Upholding the joint tenant's right of survivorship, the court stated that there was no statutory law in the jurisdiction that deprived joint tenants of their rights.[77]

Commenting on this rigid interpretation of the law, the court in *Grose v. Holland* noted that courts "have not always been deterred by [this] medieval logic" but "have appreciated that the survivor does acquire substantial benefit by the death of his co-tenant."[78] Holding that the heirs of the deceased tenant received a half interest in the property, the *Grose*

68. II AMERICAN LAW OF PROPERTY § 6.1 (Casner ed. 1952).

69. *Id.*

70. *Id.* Note that cases of a murdering tenant in common do not pose special problems because there is no right of survivorship. *Id.* at § 6.5. There exists a separate share held by each tenant and such share is an estate of inheritance. *Id.* Thus, the rights of descent and distribution apply. Such rights are not vested but are expectant rights, and no forfeiture is worked by depriving a slayer of mere expectancies. *See* Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908); Box v. Lanier, 112 Tenn. 409, 79 S.W. 1042 (1904).

71. For a list of cases allowing a murdering joint tenant the right of survivorship, *see* I. BAXTER, MARTIAL PROPERTY § 5:11 (1973).

72. *In re* Foster's Estate, 182 Kan. 315, 320 P.2d 855 (1958).

73. *Id.* at 320, 320 P.2d at 859. The court noted that the distinctive characteristic of joint tenancy is survivorship, and a surviving joint tenant of real property does not take under the laws of descent and distribution, but under the conveyance by which the joint tenancy was created, his estate being freed from participation of the other. *Id.* at 320, 320 P.2d at 859.

74. 199 Kan. 1, 427 P.2d 67 (1967).

75. *Id.* at 12, 427 P.2d at 76. *See* KAN. STAT. ANN. § 58-501 (1976).

76. 129 Ohio St. 432, 195 N.E. 838 (1935).

77. *Id.* at 437-38, 195 N.E. at 838-41.

78. 357 Mo. 874, 878, 211 S.W.2d 464, 466 (1948).

court stressed that joint tenants must share in the enjoyment of the estate; after a tenant dies, however, the survivor does not have to share the profits of the estate with another tenant.[79] In addition, a surviving tenant no longer has to endure the impending loss of interest in the estate should he or she not survive the other tenant.[80]

The reasoning in *Grose v. Holland* takes a more realistic view of the property rights of a joint tenant. The total ownership of an estate held by joint tenants is not completely vested upon creation of that estate; the vested right a joint tenant enjoys is the mere *possibility* of total ownership if he or she survives the other. If, in fact, the murdering joint tenant gains some new rights upon the death of the other joint tenant, these new rights were not vested before the murder. Furthermore, if these new rights were not vested before the murder, refusing to grant them to the surviving tenant after the murder would not work a forfeiture; a forfeiture can only take place when there is a deprivation of a vested right.[81] Thus, depriving the murdering heir of the right of survivorship cannot be said to work a forfeiture.

Such an analysis was used in *In re King's Estate*,[82] in which the court held that when a husband murdered his wife and then committed suicide, property owned by both as joint tenants should not be taken by the husband's estate. The court asserted that its finding did not work a forfeiture or attainder, since the estate never vested in the husband.[83] *King's Estate* emphasized that the court was not taking away from the slayer an estate that he had already acquired; rather, the court was preventing the slayer from acquiring additional property in an unauthorized manner.[84] The court further explained that the murdering joint tenant retains that which he had before the murder—the right to enjoy the property equally with the other joint tenant during their lifetime.[85] The murderer suffers only the deprivation of additional property.[86]

In re King's Estate also based its decision to not allow a murdering joint tenant the right of survivorship on the ability to sever the joint tenancy.[87] For example, the court noted that a simple conveyance of a mortgage, lease, or sales contract by one of the joint tenants will destroy the tenancy,[88] extinguishing the right of survivorship and creating a tenancy in common.[89] If any of these legal acts done by a single joint tenant

79. *Id.*

80. *Id.*

81. *See* Perry v. Strawbridge, 209 Mo. 621, 108 S.W. 641 (1908).

82. 261 Wis. 266, 52 N.W.2d 885 (1952).

83. *Id.* at 272, 52 N.W.2d at 888.

84. *Id.*

85. *Id.*

86. *Id.* at 272-73, 52 N.W.2d at 888.

87. *Id.* at 273, 52 N.W.2d at 889.

88. *Id. See* J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 101 (2nd ed. 1975); II AMERICAN LAW OF PROPERTY § 6.2 (Casner ed. 1952).

89. *In re* King's Estate, 261 Wis. 266, 273, 52 N.W.2d 885, 889 (1952).

can sever joint tenancy and extinguish survivorship, the illegal act of murdering the other joint tenant, an act against public policy, should accomplish the same results.

The rationale for severing joint tenancy when one tenant alienates his or her interest is that the interests of the tenants to enjoy the property jointly change.[90] Obviously, when one joint tenant murders another, the victim's interest is no longer the same as that of the murderer's. If this logic is followed to its conclusion, the joint tenancy becomes tenancy in common with no survivorship; each tenant becomes a tenant in common owning an equal and inheritable share.[91] Thus, the murdering tenant shares equally with the victim's estate; the slayer gets some but not all of the bounty.

Finally, some courts believe that the joint tenant-slayer acquires something less than all rights to property held jointly. For example, in *In re Cox's Estate*,[92] the killer, while not acquiring any interest in his wife's share of jointly held property, was allowed to retain his half share. In *Abby v. Lord*,[93] the court was more hesitant about automatically granting a murdering joint tenant his share of the property. The court sustained a decision that converted stock held in joint tenancy to tenancy in common, finding that joint tenancy was destroyed and terminated by the act of killing the decedent.[94] Instead of following principles of property that would direct that each tenant in common share equally in the stock,[95] the court held that the murderer was entitled only to the amount that he contributed toward the joint tenancy property.[96] Another approach allowing the killer to acquire something less than the whole was taken in *Neiman v. Hurff*,[97] in which the victim and murderer held stock in joint ownership. The court held that the murderer must hold the property in trust[98] subject to a lien in favor of the murderer.[99] This lien would be the value of the net income on the property for the number of years of the murderer's life as determined by mortality tables.[100]

Such judicial precedent offers a variety of exotic solutions to the problems presented by a slayer-joint tenant. The tenant may be awarded total survivorship rights by courts unwilling to deviate from either traditional property concepts or statutory provisions regarding the devolution of property. Yet, to reward the slayer with total ownership of property that

90. *Id.*

91. *Id. See* note 70 *supra.*

92. 141 Mont. 583, 380 P.2d 584 (1963).

93. 168 Cal. App. 2d 499, 336 P.2d 226 (1959).

94. *Id.* at 508-09, 336 P.2d at 233.

95. *See* II AMERICAN LAW OF PROPERTY § 6.5 (Casner ed. 1952).

96. *See* Abbey v. Lord, 168 Cal. App. 2d 499, 336 P.2d 226 (1959).

97. 11 N.J. 55, 93 A.2d 345 (1952).

98. For a discussion of the remedy of murderer holding property in constructive trust, *see* section entitled Constructive Trust *infra.*

99. Neiman v. Hurff, 11 N.J. 55, 62-63, 93 A.2d 345, 348 (1952).

100. *Id.*

he and his victim held jointly is abhorrent to the basic laws of justice and public policy.[101] Decisions that consider justice and public policy in conjunction with property law have reached more reasonable results. The slayer keeps some of the rights of a joint tenant but is not rewarded total ownership by right of survivorship. In these instances, the measure of the right kept by the slayer varies. A slayer may be allowed to retain his half share[102] or to keep the amount that he contributed toward the tenancy.[103]

Considering the variety of solutions offered by case law, if Elmer's victim had been his joint tenant, his expected results would depend on the jurisdiction and date of his trial. Following case precedent, the only thing that our friend Elmer could be certain of is that the decision would be a surprise. And, again, the question arises—what business do courts have in surprising anyone? The answer seems to be that they do it all the time.

B. *Tenancy by the Entirety*

Other problems arise when a tenant by the entirety murders a cotenant. If Elmer were to murder his spouse, how would property held as tenancy by the entirety be effected? Could Elmer succeed in claiming that any deprivation of his right as tenant works a forfeiture? And, finally, can Elmer argue that his act of murder cannot destroy the estate because a tenancy by the entirety cannot be destroyed by the act of one party?

The tenancy by the entirety is a form of co-ownership limited to husband and wife.[104] Because the estate is based on the unity of husband and wife, there is survivorship between tenants by the entirety and neither one can sever the tenancy or destroy the survivorship.[105] Consequently, the surviving tenant takes nothing new from the deceased, having had ownership of the whole from the beginning.[106] In many jurisdictions, however, the tenancy has no modern significance; instead, a conveyance to husband and wife will give rise to either a joint tenancy or a tenancy in common.[107] This result has been reached for a variety of reasons, such as the Married Women's Property Acts, which were held to have destroyed the spousal

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101. "The killer can assert no right to complete ownership as survivor. Equity will not allow him to profit by his own crime." Grose v. Holland, 357 Mo. 874, 880, 211 S.W.2d 464, 467 (1948).

102. *In re* Cox's Estate, 141 Mont. 583, 380 P.2d 584 (1963).

103. Abbey v. Lord, 168 Cal. App. 2d 499, 336 P.2d 226 (1959).

104. J. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY 283 (2nd ed. 1969). The estate comes into being when property is transferred to both husband and wife. The right to hold property by the entirety grew out of the concept that a husband and wife are considered by law to be one entity. *Id.* Under this rationale, when property is conveyed to both, both receive and hold the entire estate jointly. *See* J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 95 (2d ed. 1975). As a consequence, an estate held by the entireties cannot be partitioned except by the voluntary act of both parties or by divorce; the act of one party cannot defeat the estate. *Id.* at 93.

105. J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 95 (2d ed. 1975). The deprivation of the right of survivorship in regard to joint tenancy is discussed in an earlier section of this article.

106. *See* G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 478 (rev. 2d ed. 1978).

107. *See* J. CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 96 (2d ed. 1975).

unity.[108] Today, tenancies by the entireties do not exist in half the jurisdictions of the United States.[109] Accordingly, in these jurisdictions no concept of vested property rights would interfere with a denial of a murdering spouse's right to take his or her bounty.

Some jurisdictions, however, still recognize tenancy by the entirety and feel compelled to uphold the survivorship rights of tenants holding by the entirety. In *Beddingfield v. Estill & Newman*,[110] in which husband and wife owned real property by the entirety and the husband murdered his wife, the court refused to allow the claim of the wife's estate to the property. The court reasoned that property rights belonged exclusively to the husband, since title vested in him when the property was conveyed.[111] The court in *Hammer v. Kinnon*[112] agreed and emphasized that when a man holding an estate by the entirety kills his wife he does not inherit from her; rather, the estate merely continues in the survivor the same as it would continue in a corporation after the death of one of its incorporators.

Other jurisdictions, by disregarding the strict property law concepts of tenancy by the entireties, have refused to grant the slayer any bounty. For example, in *Van Alstyne v. Tuffy*,[113] the husband murdered his wife and then committed suicide; the court granted a judgment in favor of the wife's heirs, adjudging them to be the owners of property held by husband and wife as tenants by the entirety. The court reasoned that claims of property ownership were subject to the same equitable principle as that which prohibits a person from profiting by his own wrong.[114] Following this line of reasoning, the court in *In re Estates of Pinnock*[115] also disallowed the husband's taking when it questioned whether the wrongful act of the slayer had altered his property rights as a tenant by the entirety.[116] The court reasoned that while both husband and wife were alive, each had no more than a life interest in an undivided one-half of the property with a possibility of entire ownership if one survived the other.[117] Thus, the court refused to convert the husband's rights to those held by a tenant in common because it "would elevate the nature of his ownership as a result of his wrongful conduct."[118] In addition, the court held that the murderer

108. *Id.* Other factors have influenced the elimination of this type of concurrent ownership. The demands of creditors for increased access to the assets of their debtors and the movement for simplification of the law have questioned the justification of the existence of this separate category of ownership. 4A R. POWELL, THE LAW OF REAL PROPERTY § 621 (Rohan ed. 1979).

109. *Id.*

110. 118 Tenn. 39, 100 S.W. 108 (1907).

111. *Id.* at 45, 100 S.W. at 109-10.

112. 16 Pa. D. & C. 395 (1931).

113. 103 Misc. 455, 169 N.Y.S. 173 (1918).

114. *Id.* at 457, 169 N.Y.S. at 173-74.

115. 83 Misc. 2d 233, 371 N.Y.S.2d 797 (1975).

116. *Id.* at 237, 371 N.Y.S.2d at 801.

117. *Id.*

118. *Id.*

forfeited his rights of survivorship when he became a survivor solely because he killed his wife.[119]

Other jurisdictions have been more generous to a slayer. In *Ashwood v. Patterson*,[120] a husband murdered his wife, and the court held that the murder acted to sever the estate by the entirety. The estate was treated as if it were held by tenancy in common and it descended one half to the heirs of the wife and one half to those of the husband. This treatment of the property as if held by tenancy in common has been followed by many courts in granting the slayer (or his heirs) a one-half interest.[121]

The concept of severance of an estate by the entireties when one tenant murders the other has been relied on by some jurisdictions to refuse the slayer any additional bounty. In *Cowan v. Pleasant*,[122] a husband was not allowed to assert a right of survivorship when he murdered his wife and then committed suicide. The court reasoned that the husband's heirs were entitled to one-half of the property in the same manner as if the marital relationship had been severed.[123] Severing the tenancy under these circumstances, courts have held that the event of murder prevents the slayer's estate from inheriting the total ownership of property held in tenancy by the entireties.[124] Following this line of reasoning, other courts have analogized the murder situations to divorce cases, holding that since the fiction

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119. *Id.* In Grose v. Holland, 357 Mo. 874, 211 S.W.2d 464 (1948), the court pointed out that the law regarding survivorship applied only to instances where one tenant dies of natural causes and not where the death of one tenant is caused by the other. *Id.* at 880, 211 S.W.2d at 466. Also, it was noted that if the slayer were to acquire the whole interest as survivor, his contingent interest would be converted into a certainty. Such a result would award the slayer for his wrong, an outcome which is abhorrent to the law. *Id.*

120. 49 So. 2d 848 (Fla. 1951).

121. *See* National City Bank v. Bledsoe, 237 Ind. 130, 144 N.E.2d 710 (1957); Cowan v. Pleasant, 263 S.W.2d 494 (Ky. 1953); Budwit v. Herr, 339 Mich. 265, 63 N.W.2d 841 (1954). The idea that the court is not bound by the legal fiction of spouses' vested ownership in the entire estate is not new. In Barnett v. Couey, 224 Mo. App. 913, 27 S.W.2d 757 (1930), the husband murdered his wife and then committed suicide; the court held that only one-half descended to the husband's heirs and refused to acknowledge that the murdering husband had a right of survivorship in the entire estate. *Id.* at 920-23, 27 S.W.2d at 760-62. The court stated that ownership of the whole by both tenants by the entireties was a fiction and that the rights of survivorship were not automatic; before the benefits of survivorship could be enjoyed, there must be a determination of death in the ordinary course of events. *Id.* at 920, 27 S.W.2d at 761. Furthermore, the court stated that, in fact, tenants by the entireties have separate interests in the property. *Id.* at 918, 27 S.W.2d at 759. To support this notion of separate interests, the court pointed out other instances where it was found that a tenant by the entirety had a separate interest in property, apart from the other spouse's interest. *Id.* at 918, 27 S.W.2d at 759. For example, in Holmes v. Kansas City, 209 Mo. 513, 108 S.W. 9 (1907), an estate by the entirety was the subject of condemnation proceedings and the wife co-tenant was not made party to the suit. In an action for damages, the court held that she had a substantial and recognizable interest apart from her husband's interest. *Id.* at 526, 108 S.W. at 13.

Instead of simply granting a one-half interest in property held by the entirety, some courts have been more creative in the type of bounty granted to the slayer. In *In re* Hawkin's Estate, 213 N.Y.S.2d 188 (1961), a wife killed her husband and was held entitled to the committed value of the net income of half of the property for her life expectancy.

122. 263 S.W.2d 494 (Ky. 1953).

123. *Id.* at 496.

124. *See* Van Alystne v. Tuffy, 103 Misc. 455, 169 N.Y.S. 173 (1918).

of unity of estate is destroyed by divorce, it should also be destroyed when one spouse murders another.[125]

Thus, a "foul and felonious deed" that severs the marital status also removes the only foundation on which to base the right of tenants by the entirety.[126] In these instances, the property concepts of complete and vested rights by tenants are not invincible and can be set aside. Destruction of the right of survivorship can arise by destroying the basis of tenancy by entirety—marriage. Accordingly, as murder destroys the marital status, the destruction of the status destroys the rights of survivorship.

C. *Insurance Policies*

When a beneficiary of an insurance policy has murdered the insured, a court must face issues that do not arise for other property rights. First, a court must determine whether the beneficiary has a vested interest in the policy payments. If so, denying the beneficiary the insurance benefits may be an unconstitutional forfeiture or additional penalty.

Some early courts were not troubled by the possibility of forfeiture claims by a slayer who was denied his or her bounty. In *Supreme Lodge Knights & Ladies of Honor v. Menkhausen*,[127] a beneficiary of a life insurance policy murdered the insured. Because of the murder, the court ruled that the designated beneficiary was outside the list of eligible beneficiaries and granted the proceeds of the policy to the insured's heirs.[128] Other courts explained their denial of proceeds to the murdering beneficiary by pointing to "the unbroken voice of authority [which holds] that a beneficiary in an insurance policy who murders the insured forfeits his rights thereunder."[129]

Other courts refused the murdering beneficiary his or her bounty on the basis of public policy. In *Sharpless v. Grand Lodge A.O.U.W.*,[130] the court held that public policy may not permit the murderer to profit by a recovery on the policy.[131] Also, courts have used common logic to support

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125. Ashwood v. Patterson, 49 So. 2d 848 (Fla. 1951); State v. Ellison, 290 Mo. 28, 233 S.W. 1065 (1921).

126. *See* Hogan v. Martin, 52 So. 2d 806 (Fla. 1951). Another example of destruction of tenancy by the entirety is when one tenant renewed a leasehold in her name alone. Rezabek v. Rezabek, 196 Mo. App. 673, 192 S.W. 107 (1917).

127. 209 Ill. 277, 70 N.E. 567 (1904). For a list of cases supporting the general proposition that a beneficiary of a life insurance policy who kills the insured is precluded from recovering the proceeds *see* Annot., 27 A.L.R. 3d 794, 802-04 (1969).

128. Supreme Lodge Knights & Ladies of Honor v. Menkhausen, 209 Ill. 277, 282-83, 70 N.E. 567, 569 (1904).

129. Schmidt v. Northern Life Ass'n, 112 Iowa 41, 44, 83 N.W. 800, 801 (1901). *See, e.g.*, New York Mutual Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886); Schriener v. High Court, 35 Ill. App. 576 (1889).

130. 135 Minn. 35, 159 N.W. 1086 (1916).

131. *Id.* at 36, 159 N.W. at 1087.

the denial of the murdering beneficiary his taking.[132] For example, courts have reasoned that since a person who burns his own house cannot recover under an insurance policy, neither can a beneficiary who murders the insured.[133]

Such reasoning, however, was soon met with claims by the murderer that denial of insurance proceeds did, in fact, work a forfeiture. In *Johnston v. Metropolitan Life Insurance Co.*,[134] the insured was murdered by his wife, the beneficiary of his insurance policy, who later assigned her rights to the proceeds to another person. In a suit brought by the murdering wife, the court noted that "[u]nder our law there is no longer corruption of blood or forfeiture of estates upon conviction of crime."[135] Therefore, the court did not allow the beneficiary to recover in her own right; but she was granted the right of recovery as a taker of the insured's estate under the laws of descent and distribution.[136]

In *Illinois Bankers' Life Association v. Collins*,[137] the court addressed this question and noted that since the insured had the right to change the beneficiary during her life, the beneficiary had no vested interest in the policy.[138] Instead, when a husband-beneficiary kills his wife, the situation is treated as if the husband had been divorced from his wife and she had thereafter died; under these circumstances, the property would pass to the next of kin of the deceased rather than to the murderer.[139]

Thus, when the insured retains the right to change beneficiaries, any vested rights in the insurance policy remain with the insured. These vested rights have been deemed to be "choses in action" and are the property of the insured, not the beneficiary.[140] Accordingly, no forfeiture takes place upon the denial of the beneficiary's right to take the proceeds from a policy when the beneficiary has killed the insured.[141]

Even when a beneficiary has some rights or claims to an insurance policy, courts have denied the slayer his bounty. For example, in *Draper v.*

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132. W VANCE, INSURANCE § 108 at 679 (3d ed. 1951). For example, in the case of an anticipatory breach of contract by an insurer the cause of action has been held to be in the insured and not in the beneficiary. *Id.* Such a situation was presented in Speer v. Phoenix Mut. Life Ins. Co., 43 N.Y. Sup. Ct. 322 (1885), in which the company was willing to pay the insured the cost of replacing a broken contract. *See* Lovell v. Insurance Co., lll U.S. 264 (1884).

133. New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591, 600 (1886); Illinois Banker's Life Ass'n v. Collins, 341 Ill. 548, 552, 173 N.E. 465, 467 (1930). *See* Eagle Star & British Dominos Ins. Co. v. Heller, 149 Va. 82, 140 S.E. 314 (1927).

134. 85 W. Va. 70, 100 S.E. 865 (1919).

135. *Id.* at 74, 100 S.E. at 867.

136. *Id.*

137. 341 Ill. 548, 173 N.E. 465 (1930).

138. *Id.* at 550, 173 N.E. at 466.

139. *Id.* at 551, 173 N.E. at 466. *See* New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591 (1886); Schmitt v. Northern Life Ass'n, 112 Iowa 41, 83 N.W. 800 (1900); Johnston v. Metropolitan Life Ins. Co., 85 W. Va. 70, 100 S.E. 865 (1919).

140. *See* W. VANCE, INSURANCE § 108 at 679 (3d ed. 1951).

141. Greer v. Franklin Life Ins. Co., 148 Tex. 166, 221 S.W.2d 857 (1949); Johnston v. Metropolitan Life Ins. Co., 85 W. Va. 70, 100 S.E. 865 (1919); *see also* 4 G. COUCH, CYCLOPEDIA OF INSURANCE LAW § 27:149 at 698-99 (2d ed. 1960).

Commissioner of Internal Revenue,[142] the husband was the owner and beneficiary on policies insuring his wife. After he murdered her and then killed himself, the court ruled that he and his heirs were estopped from receiving the proceeds and, therefore, the proceeds were part of the wife's taxable estate.[143] Another example is *New York Mutual Life Insurance Co. v. Armstrong*,[144] in which a policy insuring the decedent was payable to him or his assigns. Before his death, he assigned his rights to receive the proceeds to a third person, and there was evidence that this assignee feloniously killed the insured.[145] While deciding the case on evidentiary grounds, the court commented that "[i]t would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken."[146] Thus, regardless of the rights to insurance policy proceeds claimed by a beneficiary, the court denied the slayer his bounty.[147]

Because of this emphasis on equitable principles, the constructive trust method has been used to deny a murdering beneficiary his or her bounty.[148] For example, in *Jackson v. Prudential Insurance Co.*,[149] the court, noting that settled public policy did not allow one to profit from his own wrongdoing, imposed a constructive trust on the money.[150] Under this trust, the slayer of the intestate victim was ordered to hold the proceeds as constructive trustee for the other heirs.[151] Although the wrongdoer had legal title to the property and the laws of descent and distribution were

142. 536 F.2d 944 (1st Cir. 1976).

143. *Id.* at 949.

144. 117 U.S. 591 (1886). For other cases holding that an assignee of such policies who murders the insured is precluded from recovering proceeds, *see* Holdom v. Ancient Order, O.A.U.W., 159 Ill. 619, 43 N.E. 772 (1895); Houser v. Havin, 32 Tenn. App. 670, 225 S.W.2d 559 (1949).

145. New York Mut. Life Ins. Co. v. Armstrong, 117 U.S. 591, 597 (1886).

146. *Id.* at 600. When a beneficiary causes the insured's death unintentionally and not feloniously, such beneficiary can recover the proceeds. *See also* Shoemaker v. Shoemaker, 263 F.2d 931 (6th Cir. 1959).

147. For examples of authorities which hold that it would be against sound public policy to permit a beneficiary of a life insurance policy to recover proceeds on that policy when he has killed the insured, *see* Metropolitan Life Ins. Co. v. Shane, 98 Ark. 132, 135 S.W. 836 (1911); Schmidt v. Life Ins. Ass'n, 112 Iowa 41, 83 N.W. 800 (1900); Anderson v. Life Ins. Co., 152 N.C. 1, 67 S.E. 53 (1910); Filmore v. Metropolitan Life Ins. Co., 82 Ohio St. 208, 92 N.E. 26 (1910).

A question could arise, however, whether this may involve a forfeiture of valuable rights under the policy for commission of a crime. The beneficiary will not be entitled to recover the face amount of the policy. The injustice of any other result would be apparent if, for example, the face amount was $10,000 whereas he had paid $500 in premiums. Nor will he be able to obtain restitution of the premiums paid, since the insurer was carrying the risk. But, it would not be proper to hold that he forfeited the cash surrender value because of the homicide. 4 G. PALMER, THE LAW OF RESTITUTION § 20.14 (1978).

148. AMERICAN LAW INSTITUTE, RESTATEMENT OF RESTITUTION § 189 (1937). Section 189 provides that:

> (1) If the beneficiary of a life insurance policy murders the insured, he holds his interest under the policy upon a constructive trust for the estate of the insured.
>
> (2) If the beneficiary of a life insurance policy in which the insured has not reserved power to change the beneficiary is murdered by the insured, the latter holds his interest under the policy upon a constructive trust for the estate of beneficiary.

149. Jackson v. Prudential Ins. Co., 106 N.J. Super. 61, 254 A.2d 141 (1969).

150. *Id.* at 78, 254 A.2d at 150.

151. *Id.*

followed, the benefit of ownership was held by those considered by public policy to be more deserving.

Other courts, strictly adhering to statutory mandates, have allowed a slayer to collect insurance proceeds. One strange result occurred in *Murchison v. Murchison*,[152] in which the beneficiary of a husband's life insurance policy killed her husband, who died intestate and without children. In this case, the court held that the wife, by her wrongful act, deprived herself of taking the proceeds as beneficiary; instead, the proceeds were vested in the husband's estate.[153] The court then reviewed the statutory law of descent and distribution and held that the wife took the proceeds as part of her husband's estate.[154] Refusing to make an exception to statutory law, the court noted the plain and unambiguous language of the statute and asserted that it must be given effect by the courts even though the death was intentionally caused by one to whom the property would descend and vest.[155] Thus, although insurance proceeds do not directly pass to a wrongdoer-beneficiary, the proceeds pass to a victim's estate. If a wrongdoer-beneficiary is a taker of the estate under the statutory laws of descent and distribution, some courts have held that they lack power to interfere with such taking.[156]

The intent of the insured has also been considered by courts when deciding whether to allow a beneficiary insurance proceeds. In *Beck v. West Coast Life Insurance Co.*,[157] Justice Traynor noted that even though the full intent of the insured cannot be carried out, the insured indicated that any interest of her estate should be subordinate to those of the alternate beneficiary. Thus, to hold that the insured's estate and not the contingent beneficiary is entitled to the proceeds would defeat this intent.[158] In addition, such a finding would allow the slayer to deprive the alternative beneficiary of her opportunity to take if the slayer predeceased the insured.[159] Using this same reasoning in *Brooks v. Thompson*, a murderer was precluded from taking insurance proceeds, and the contingent beneficiary under the policy, rather than the estate of deceased, received payment.[160] The murderer was prohibited from taking by statute,

152. 203 S.W. 423 (Tex. Civ. App. 1918).

153. *Id.* at 426.

154. *Id.*

155. *Id.* The court cited many cases for authority that courts cannot interfere with the statutory rules of descent and distribution even when the result is to allow the murderer his or her bounty.

156. *See* Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888); Shallenberger v. Ransom, 41 Neb. 631, 59 N.W. 935 (1894); Carpenter's Estate, 170 Pa. 203, 32 A. 637 (1895); McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906); Hill v. Noland, 149 S.W. 288 (Tex. Civ. App. 1912). The Texas legislature later enacted a statute eliminating the interest of a beneficiary in favor of the nearest relative of insured where the beneficiary willfully brings about the death of insured. *See* Greer v. Franklin Life Ins. Co., 148 Tex. 166, 221 S.W.2d 857 (1949).

157. 38 Cal. 2d 643, 241 P.2d 544 (1952).

158. *Id.* at 647, 241 P.2d at 547.

159. *Id.* at 648, 241 P.2d at 547.

160. 521 S.W.2d 563 (Tenn. 1975).

and the court reasoned that the statutory prohibition reflected the legislature's intent that alternative provisions in a will or deed should be carried out when a person is barred from taking.[161]

A slightly different result was reached in *Turner v. Prudential Insurance Co.*,[162] in which the court held that the murderer-primary beneficiary was to hold the proceeds for the benefit of the contigent beneficiaries rather than the decedent's estate.[163] Focusing on the intent of the insured, the court noted that the designation of a beneficiary in an insurance policy is donative and testamentary in nature.[164] It is, therefore, evidence of an insured's intent that alternative beneficiaries have rights to receive insurance proceeds superior to those of an insured's estate.[165] Hence, courts have been creative in finding legal bases to support the principle that no one may profit from his or her wrong; and by finding support for this principle, courts have denied a slayer his or her bounty.

III. CONSTRUCTIVE TRUSTS: A COURT-MADE SOLUTION

The remedy of the constructive trust has often been adopted as a solution to the variety of problems posed by a slayer and his or her bounty.[166] The constructive trust is an equitable device used to compel one who unfairly holds a property interest to convey the interest to whom it justly belongs.[167] This is done by an equitable decree that vests legal title in the wrongdoer but directs the wrongdoer-trustee to convey the property to the beneficial owners.[168] As a result, consistency and logic are both preserved because first, legal title to the property passes by will in accordance

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161. *Id.* at 566. The court noted that an opposite result had been reached in Bullock v. Expressmen's Mut. Life Ins. Co., 234 N.C. 254, 67 S.E.2d 71 (1951), in which the court used "a close and literal interpretation of the language of the policy." Brooks v. Thompson, 521 S.W.2d 563, 566 (Tenn. 1975). In *Bullock*, proceeds from the insurance policy were held payable to the estate of the insured. Bullock v. Expressmen's Mut. Life Ins. Co., 234 N.C. 254, 258, 67 S.E.2d 71, 75 (1951). This result was subsequently changed by statute. *See* N.C. GEN. STAT. § 31A-11 (1961).

162. 60 N.J. Super. 175, 158 A.2d 441 (1960).

163. *Id.* at 181-82, 158 A.2d at 444-45.

164. *Id.* at 178, 158 A.2d at 442-43.

165. *Id.* at 178-79, 158 A.2d at 443.

166. *See generally* G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 578 (rev. 2d ed. 1978).

167. *Id.* at § 471. For example, in Pope v. Garrett, 147 Tex. 18, 211 S.W.2d 559 (1948), the heirs of testatrix created a disturbance and prevented her from executing a will in favor of a third party. The court stated:

> it is a well settled general rule that if one person obtains the legal title to property . . . by fraud . . . [or] in any other unconscientious manner, so that he cannot equitably retain the property . . . equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it.

Id. at 21-22, 211 S.W.2d at 560 *citing* Binford v. Snyder, 144 Tex. 134, 138, 189 S.W.2d 471, 472-73 (1945).

168. *See* G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 471 (rev. 2d ed. 1978). The Restatement of the Law of Restitution asserts that:

> (1) Where a devisee or legatee murders the testator, he holds the property devised or bequeathed to him upon a constructive trust for the persons who would have been entitled to the property on the death of the testator if the devise or bequest had been revoked.

with the laws of descent and distribution or under property law, and second, public policy is served by requiring a murdering heir to distribute equitably property interests to innocent third parties.[169] In effect, a constructive trust is a form of passive trust in which a trustee has no real powers. The only purpose of such a trust is to obtain an equitable result.[170] Thus, a beneficial owner of such a trust is entitled to full title to the property free from any intervention or control by a trustee.[171]

Courts have used the remedy of a constructive trust in several situations. For example, in a case involving intestate succession, one court reversed and remanded a decision that awarded a decedent's estate to his parents instead of his spouse, who had been convicted of killing the decedent.[172] Because there was no statutory exception to the spouse's statutory share, the court held that legal title should pass to the surviving spouse but only as a constructive trustee.[173] Therefore, the court avoided judicial legislation by amending the statutory laws of descent and distribution, allowing legal title to pass according to the statutes. The court held, however, that a court of equity could direct the surviving spouse to hold the property in trust for the decedent's parents.[174]

Similarly, when faced with a murdering heir who would inherit under a will, a Texas court applied the doctrine of unjust enrichment.[175] By creating a constructive trust, the court avoided judicial legislation and prevented the murdering husband from inheriting his wife's estate.[176] This

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(2) Where a person is murdered by his heir or next of kin, and dies intestate, the heir or next of kin holds the property thus acquired by him upon a constructive trust for the person or persons who would have been heirs or next of kin if he had predeceased the intestate. AMERICAN LAW INSTITUTE, RESTATEMENT OF RESTITUTION, § 187 (1937).

Once property has been held to be subject to a constructive trust, the person having beneficial interest can proceed in equity to compel the constructive trustee to transfer the property to him in specie. *Id.* at § 160, comment e. Alternatively, a person having a beneficial interest in such property may maintain an action at law against the constructive trustee for the value of the property. *Id.*

169. *See, e.g.*, Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 188 (1889). *See* B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 42 (1921).

170. *See* 5 SCOTT ON TRUSTS 462 (3d ed. 1967). Justice Cardozo wrote that "a constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." Beatty v. Buggenheim Exploration Co., 225 N.Y. 380, 386, 122 N.E. 378, 381 (1919). *See* Bellows v. Page, 88 N.H. 283, 284, 188 A. 12, 13-14 (1936).

171. G. BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 207 (rev. 2d ed. 1978). By applying the Statute of Uses, the beneficial right or use is executed. The Statute of Uses can be applied to both interests in land and personality. *Id.*

172. *In re* Estate of Mahoney, 126 Vt. 31, 220 A.2d 475 (1966).

173. *Id.* at 36, 220 A.2d at 479.

174. *Id.* at 33-34, 220 A.2d at 477-78.

175. Pritchett v. Henry, 287 S.W.2d 546 (Tex. Civ. App. 1955).

176. *Id.* at 549. In this case, a husband killed his wife, and the court noted that because neither the statutes on wills nor the statutes on descent and distribution in Texas made any provision regarding murdering heirs, the wife's property had to pass under the will or by intestacy to the murdering husband. *Id.* The court, however, reasoned that application of the law triggered the equitable principle of unjust enrichment and, therefore, the court created a constructive trust so that the murdering husband would not profit by his wrong. *Id.* at 549-51. Finally, the court held that a constructive trust could be used to reconcile problems of dower and curtesy when one spouse murders the other. *Id.* at 550.

reasoning has also been applied in cases of joint tenancies[177] and tenancies by the entirety.[178] The special problem with these tenancies, however, is the court's determination of which portion of an estate is to be held in a constructive trust. One court held that the constructive trust was comprised of a murdered wife's interest in the net income of the property for her normal life expectancy.[179] A Delaware court, however, disagreed when it permitted a murdering husband to enjoy the value of the net income of his wife's one-half interest for his life expectancy.[180]

Even with these minor inconsistencies, however, courts have found the constructive trust a desirable remedy to murdering heir problems because the remedy does not violate statutory law. Instead of contravening or circumventing the various applicable statutes, the constructive trust is viewed as outside such statutes; it is a creature of equity.[181] Furthermore, under the murdering heir or spouse circumstances, legal title passes according to the normal operative rules of wills, succession, concurrent estates, and contingencies.[182] The constructive trust remedy, therefore, does not violate established rules such as those found in property law.

IV. GENERAL PRINCIPLES OF LAW

In many of the foregoing cases, the courts relied on general principles

177. *See, e.g.*, Bradley v. Fox, 7 Ill. 2d 106, 129 N.E.2d 699 (1955). In this case, a husband and wife owned property as joint tenants, and the husband killed his wife. *Id.* at 108, 129 N.E.2d at 701. Refusing to be led blindly by strict adherence to the property rules of joint tenancy, which would have allowed the husband to take his wife's one-half interest in the property, the court held that the murderer retained title only to his undivided half-interest in the property and held the remaining interest as constructive trustee for the benefit of his wife's heirs. *Id.* at 118, 129 N.E.2d at 706. Thus, the court agreed with Cardozo, who wrote that "the social interest served by refusing to permit the criminal to profit by his crime is greater than that served by the preservation and enforcement of legal rights of ownership." B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 43 (1921).

178. *See, e.g.*, Bryant v. Bryant, 193 N.C. 372, 137 S.E. 188 (1927). In this case, the court stated that when a husband and wife hold property as tenants by the entirety, and the husband murders his wife, the husband takes legal title. *Id.* at 378, 137 S.E. at 191. The husband must, however, hold the wife's one-half interest as a constructive trustee until his death, at which time the deceased wife's heirs will take legal and equitable title to the property. *Id.* at 379, 137 S.E. at 191-92.

179. Sherman v. Weber, 113 N.J. Eq. 451, 167 A. 517 (1933). Here, title to property held by husband and wife as tenants in the entirety was vested in the husband in fee as survivor, subject to a trust in favor of the wife's heirs.

180. Colton v. Wade, 32 Del. Ch. 122, 80 A.2d 923 (1951). Here, legal title vested in the husband as constructive trustee for the benefit of the victim's heirs. Here is a similar disagreement regarding property held by joint tenants. *See, e.g.*, Vesey v. Vesey, 237 Minn. 295, 54 N.W.2d 385 (1952) (where the wife killed her husband with whom she held jointly a bank account, the wife was entitled to the balance of that account subject to a constructive trust for the benefit of the decedent's heirs); Neiman v. Hurff, 11 N.J. 55, 93 A.2d 345 (1952) (where a husband murdered his wife with whom he held stocks as joint tenant, the court held that the husband would take the shares of stock in trust for those taking under the wife's will. This constructive trust was subject to the husband's award of the value of the net income of one-half the shares for the number of years of the husband's life expectancy).

181. Pope v. Garrett, 147 Tex. 18, 211 S.W.2d 559 (1948).

182. 4A R. POWELL, THE LAW OF REAL PROPERTY 598[4] (rev. ed. 1979). The following present examples of imposing constructive trusts in situations where various statutes were also applicable. *In re* Will of Wilson, 5 Wis. 2d 178, 92 N.W.2d 282 (1958) (where a constructive trust was imposed upon a legatee who murdered his wife, the court held that he would not share in her estate by operation of the laws of joint tenancy, intestate succession, or dower); *In re* Estate of Kalfus v. Kalfus, 81 N.J. Super. 435, 195 A.2d 903 (1963) (where the interest which the husband took by inheritance and as tenant by curtesy were held subject to a constructive trust).

to deny a slayer his or her bounty. For example, in *Riggs v. Palmer*,[183] the court rejected the earlier decision in *Owens v. Owens*[184] and relied on the general principle of law that no one shall be permitted to profit from his or her wrong.[185] This principle is one of a large body of general principles that, many scholars believe, are just as much as a part of the law as specific common law rules and statutes.[186] Yet, neither the court in *Riggs v. Palmer* nor scholars who believe in general principles of law have identified the specific source of these principles.

The whole question of the existence of general principles has been perpetually examined by scholars of jurisprudence who have debated the nature of law as either rules or principles and have questioned whether rules are derived from principles. Hence, a scholar's description of the nature of the law is the key to whether or not principles are considered part of the law. For example, John Austin perceives that the law is a set of commands given by political superiors to political inferiors or orders backed by threats.[187] Thus, the law becomes "a set of timeless rules stocked in some conceptual warehouse."[188] This characterization does not tolerate general principles as part of law because principles, by their nature, do not have a specific source.

H.L.A. Hart argues, however, that the concept of law as commands is too narrow because it fails to include all of the various types of law, such as rules conferring legal power, laws that lie behind the operation of law courts, and statutes conferring legislative powers.[189] Thus, Hart characterizes law as rules originating from a legitimate sovereign body, including rules that do not fit Austin's description of orders backed by threats.[190] According to Hart, rules are static and there will always be borderline and unclear cases to which the application of a rule is questionable.[191] These borderline cases give the law a certain "open texture" in which the law refers to classes of persons and things, and a judge must then decide whether the law is applicable in a specific situation.[192] This conceptualization of the law led Justice Cardozo to conclude that the judge's function is to fill "the open space in the law."[193] Is then, the judge free to make law

183. 115 N.Y. 506, 22 N.E. 188 (1889). The slayer was held not entitled to property either as a donee under a will or as an heir.

184. 100 N.C. 240, 6 S.E. 794 (1888). A wife convicted as accessory to her husband's murder was held entitled to dower.

185. Riggs v. Palmer, 115 N.Y. 506, 511, 22 N.E. 188, 190 (1889).

186. *See generally* Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14 (1967).

187. Austin, *The Nature of Law, in* READINGS IN JURISPRUDENCE AND LEGAL PHILOSOPHY 13 (P. Shuchman ed. 1979).

188. Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14, 16 (1967).

189. H.L.A. HART, THE CONCEPT OF LAW 26-48 (1972).

190. *Id.* at 49-76. Hart also classified rules as primary (those that grant rights or impose obligations upon members of the community) and secondary (those that stipulate how and by whom such primary rules may be formed, recognized, modified or extinguished). *Id.* at 77-96.

191. *Id.* at 1-17.

192. *Id.* at 121-32, 138-50.

193. B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 113 (1921).

when asked to exercise judicial discretion? Or, is there something else that the judge must consider in deciding a borderline case?

Ronald Dworkin believes that legal principles are additional authority that judges must consider.[194] A principle is "a standard that is to be observed . . . because it is a requirement of justice or fairness or some other dimension of morality."[195] Illustrating this point, Dworkin discusses the case of *Riggs v. Palmer* to support his claim that general principles do indeed exist and are used by the courts.[196] In *Riggs v. Palmer*, the court noted that under the then current law, the murderer should have inherited the property. The court, however, stated that general, fundamental maxims of the common law controlled all laws and that under one such maxim— that no one shall profit from his or her own wrong—the slayer must be denied his bounty.[197]

Courts not only rely on principles when there is no law or when the case is "borderline", but also when there is an applicable statutory law, such as in *Riggs v. Palmer*, that regulates wills and the devolution of property.[198] Yet, the court refused to apply statutory law, relying, instead, on "maxims dictated by public policy . . . [having] their foundation in universal law administered in all civilized countries."[199] Thus, the court denied the slayer his bounty.[200]

Surprisingly, few of the courts that have relied on general principles as justification for denying the slayer his or her bounty have discussed the specific origin of these principles.[201] In *Riggs v. Palmer*, the judge expressed uncertainty concerning the source of the principle and further suggested that it perhaps had its origin in the civil law system.[202] Under civil law, heirs are classified as "unworthy" if they have been condemned for having killed or attempted to kill the deceased and are disqualified from receiving property by will or under the laws of succession.[203] In some instances, the children of unworthy heirs are also disqualified from tak-

194. *See* Dworkin, *The Model of Rules*, 35 U. CHI. L. REV. 14, 29-30 (1967).

195. *Id.* at 23.

196. *Id.* at 23-24.

197. Riggs v. Palmer, 115 N.Y. 506, 509-11, 22 N.E. 188, 189-90 (1889).

198. *Id.* at 509, 22 N.E. at 189.

199. *Id.* at 511-12, 22 N.E. at 190.

200. *Id.* at 511-12, 22 N.E. at 190-91.

201. Reppy, *The Slayer's Bounty—History of the Problem in Anglo-American Law*, 19 N.Y.U. L.Q. 229, 268 (1942). For examples of cases relying on general principles, *see* Cleaver v. Mutual Reserve Fund Life Association, [1891] 1 Q.B. 147, in which the court stated that it is against public policy to allow a person to claim any benefit by virtue of his crime; *In re* Santourian's Estate, 125 Misc. 668, 669, 212 N.Y.S. 116, 118 (1925), in which the court noted that "[i]t has long been the settled law . . . that one who kills another for the purpose and with the intent of inheriting or succeeding to the property of one killed . . . could not be permitted to profit by his crime;" Van Alstyne v. Tuffy, 103 Misc. 455, 457, 169 N.Y.S. 173, 173-74 (1918), in which the court states that "[i]t is a fundamental principle of the civil law, as well as the common law, that no person shall be permitted to profit by his own fraud, or to take advantage . . . by his own crime."

202. Riggs v. Palmer, 115 N.Y. 506, 513, 22 N.E. 188, 190 (1889).

203. AMOS & WALTON, INTRODUCTION TO FRENCH LAW 294 (3d ed. 1967).

ing.[204] This unworthiness takes place by operation of law without the necessity for any judicial declaration.[205]

Several courts have made specific reference to foreign law as the source of these principles. In *In re Wolf*, the court reviewed the principle that no one shall profit from his own crime.[206] The court noted that under ancient Roman law inheritance was forfeited when a deceased lost his life through the fault or negligence of an heir.[207] The court also pointed out that the wrongdoer is prohibited from taking under French, German, and Canadian law.[208] Although the court noted that the common law lacked such principles, it asserted that common law courts could recognize these principles as statements of public policy, as was done in *Riggs v. Palmer*.[209] Other decisions support the reasoning that these principles are part of public policy and can therefore be considered as authority upon which to base judicial decisions. For example, the decision in *Fauntleroy's Case* is based "upon the plainest principles of public policy."[210] Commenting on this case, a later court noted that "[i]t may be that there is no authority directly asserting the existence of the principle; but the decision of the House of Lords in *Fauntleroy's Case* appears to proceed on this principle,"[211] on the basis that principles of public policy must be applied. And, other courts have done just that; they have applied general principles under the guise of public policy. They have also applied public policy principles in conjunction with property law,[212] insurance law, and contract law.[213] In

204. *Id.* at 292-94.

205. *Id.* at 294.

206. *In re* Wolf, 88 Misc. 433, 150 N.Y.S. 738 (1914).

207. *Id.* at 437, 150 N.Y.S. at 740.

208. *Id.* Civil law systems, however, are noted for the giving of rules that European judges can consult in deciding issues. Contrarily, English and American judges, under common law systems, must examine statutes, stare decisis, and, if there are no precedents or if the question is equitable in nature, look to underlying principles. Even when relevant statutes and stare decisis exist, judges still revert to general principles leading some scholars to explore their right to do so within the realm of judicial discretion. *See generally* Greenawalt, *Discretion and Judicial Decision: The Elusive Quest for the Fetters that Bind Judges*, 75 COL. L. REV. 359, 360-61 (1975).

209. *In re* Wolf, 88 Misc. 433, 438, 150 N.Y.S. 738, 740 (1914). An interesting suggestion was raised by Alison Reppy concerning how civil law principles may have found their way into the common law. *See* Reppy, *The Slayer's Bounty—History of the Problem in Anglo-American Law*, 19 N.Y.U. L.Q. Rev. 229, 268 (1942). Reppy noted that some of the earlier English chancellors were trained in Rome and were, therefore, "fully acquainted with intricacies of the civil law." *Id.* Perhaps these chancellors, who administered the King's justice along with the judges of the common law courts, assimilated civil law principles into the common law. *Id.*

210. 4 Bligh (N.S.) 194, 211, 5 Eng. Rep. 70, 76 (Ch. 1830).

211. Cleaver v. Mutual Reserve Fund Life Ass'n, [1891] 1 Q.B. 147, 156.

212. *See* previous discussion on joint tenancy and tenancy by the entirety. For examples of the application of principles under the theory of public policy, *see* Barnett v. Couey, 224 Mo. App. 913, 27 S.W. 757 (1930), which involved property held by the entirety. Here, the court noted that "there are certain general and fundamental maxims of the common law which control laws as well as contracts. Among these are: No one shall be permitted . . . to acquire property by his own crime. These maxims are adopted by public policy and have their foundation in universal law administered in all civilized countries." *Id.* at 920, 27 S.W.2d at 760, *citing* Perry v. Strawbridge, 209 Mo. 621, 632, 108 S.W. 641, 643 (1908). In Bradley v. Fox, 7 Ill. 2d 106, 129 N.E.2d 699 (1955), a case involving joint tenancy, the court pointed out that "[t]he Illinois statute prohibiting the devolution of property to a convicted

addition, equity courts have applied public policy principles in connection with the principles of constructive trust law.[214] Indeed, in public policy courts have found a sound basis upon which to deny a slayer his bounty.[215]

V. THE COMMON LAW APPROACH: CONCLUSION

The common law has had a good deal of difficulty with murdering heir problems. When the Forfeiture Act of 1870 completely abolished the doctrines of forfeiture, corruption of blood, and escheat, some judges felt bound to strictly follow relevant statutory law. To do otherwise would be judicial legislation, a repulsive notion to many.

To support the view of strict adherence to statutory law, courts emphasized that a murdering heir will be punished by the criminal justice system. Furthermore, they noted that forfeiture has been prohibited by either a state or federal constitution, and courts are bound to uphold the constitution. But, forfeiture takes place only when a murderer is deprived of vested rights; thus, courts have gotten further tangled in the web of law relevant to the murdering heir problem by having to determine the types of property rights vested in the murderer. Courts also have been lost in the legal mire of joint tenancy, tenancy by the entirety, and insurance policy ownership.

Some courts have found answers to the murdering heir problem by applying either equitable principles or general principles of law. One equitable remedy, the constructive trust, has been used to deny the slayer his or her bounty on the basis of justice or unjust enrichment. The general principle that no one should profit from his or her own wrong has also been used as authority for denying the slayer the victim's bounty. Although the majority of judges, lawyers and scholars agree that the slayer must be denied his or her bounty, there nevertheless is disagreement concerning the authority for reaching that conclusion. And, since common law in general

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murderer from his victim . . . does evince a legislature policy to deny the convicted murderer the fruits of his crime." *Id.* at 116, 129 N.E.2d at 705.

213. *See* previous discussion on insurance problems. *See, e.g.*, Illinois Banker's Life Ass'n v. Collins, 341 Ill. 548, 173 N.E. 465 (1930). In this case, involving insurance proceeds, the court observed that "courts may apply the principles of the common law to the requirements of the social, moral and material conditions of the people . . . and declare what rule of public policy seems best adapted to promote the peace, good order and the general welfare of the community." *Id.* at 551, 173 N.E. at 466.

214. *See* previous discussion on the constructive trust remedy. There is a strong public policy against allowing a murderer to enjoy the benefits of property formerly owned by a victim. To satisfy this policy, some courts have not allowed the slayer to take property, but have instead imposed a constructive trust on the property. *See generally* Note, *Constructive Trust Theory as Applied to Property Acquired by Crime*, 30 HARV. L. REV. 622 (1917).

215. Justice Cardozo explains that principles are interpreted in the "social interest." Discussing the conflicting principles presented in *Riggs v. Palmer*, he stated:

> There was the principle of the binding force of a will . . . [and] the principle that no man should profit from his own inequity or take advantage of his own wrong. . . . The murderer lost the legacy for which the murder was committed because the social interest served by refusing to permit the criminal to profit by his own crime is greater than that served by the preservation and enforcement of legal rights of ownership.

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has traditionally stressed the need to rely on stare decisis and judicial precedent, courts have been reluctant to rely on general principles. Thus, there has been a tendency to throw the ball into the legislature's court for a more comprehensive solution to the problem of the murdering heir.

VI. THE STATUTORY SOLUTION[216]

As previously mentioned,[217] the North Carolina Supreme Court, in *Owens v. Owens*, allowed a murderess to receive her dower rights even though she murdered her husband.[218] Unlike the New York court in *Riggs v. Palmer*, which would have not permitted this result,[219] the *Owens* court chose to interpret strictly the controlling statutes on descent and distribution, which statutes contained no special provision for murderers.[220]

In response, the North Carolina General Assembly enacted a statute abrogating this ruling.[221] Since then, North Carolina's statutory scheme

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216. Following are the statutes this section will address.
ALASKA STAT. § 13.11 (1979) (Alaska); ARIZ. REV. STAT. ANN. § 14-2803 (West 1975) (Arizona); ARK. STAT. ANN. § 61-230 (1971) (Arkansas); CAL. PROB. CODE § 258 (West Supp. 1979) (California); COLO. REV. STAT. § 15-11-803 (1974) (Colorado); CONN. GEN. STAT. § 45-279 (West Supp. 1979) (Connecticut); D. C. CODE ENCYCL. § 19-320 (West 1967) (Dist. of Columbia); FLA. STAT. ANN. § 732.802 (West 1976) (Florida); GA. CODE ANN. § 113-909 (1975); GA. CODE ANN. § 56-2506 (1977) (Georgia); HAW. REV. STAT. § 560:2-803 (1976) (Hawaii); IDAHO CODE § 15-2-803 (Supp. 1977) (Idaho); ILL. REV. STAT. ch. 110-1/2, §§ 2-6, 4-12 (1977) (Illinois); IND. CODE ANN. § 29-1-2-12 (Burns Supp. 1979) (Indiana); IOWA CODE ANN. §§ 633.535 to .537 (West 1964) (Iowa); KAN. STAT. § 59-513 (1976) (Kansas); KY. REV. STAT. ANN. § 381.280 (Baldwin 1972) (Kentucky); LA. CIV. CODE ANN. art. 964 to 975 (West 1952) (Louisiana); MD. CRIM. LAW CODE ANN. art. 27, § 635 (1976) (Maryland); MICH. COMP. LAWS ANN. § 700.251 (West 1980) (Michigan); MINN. STAT. ANN. § 524.2-803 (West 1975) (Minnesota); MISS. CODE ANN. §§ 91-1-25, 91-5-33 (1972) (Mississippi); MONT. REV. CODES ANN. § 91A-2-803 (Spec. UPC Pamphlet 1975) (Montana); NEB. REV. STAT. § 30-2354 (1975) (Nebraska); NEV. REV. STAT. § 134.130 (1973) (Nevada); N. J. REV. STAT. § 3A:2A-83 (1979) (New Jersey); N.M. STAT. ANN. §§ 30-2-9, 45-2-803 (1978) (New Mexico); N.C. GEN. STAT. §§ 31A-3 to -14 (1976) (North Carolina); N.D. CENT. CODE § 30.1-10-03 (1976) (North Dakota); OHIO REV. CODE ANN. § 2105.19 (Page 1976) (Ohio); OKLA. STAT. tit. 84, § 231 (Supp. 1979) (Oklahoma); OR. REV. STAT. §§ 112.455 to .555 (Supp. 1977) (Oregon); 20 PA. CONS. STAT. ANN. §§ 8801-8815 (Purdon 1975) (Pennsylvania); R. I. GEN. LAWS §§ 33-1.1-1 to 1-16 (1970) (Rhode Island); S.C. CODE § 21-1-50 (1976) (South Carolina); S.D. COMP. LAWS ANN. §§ 29-9-1 to -20 (1977) (South Dakota); TENN. CODE ANN. § 31-117 (1977) (Tennessee); TEX. PROB. CODE ANN. § 41(d) (Vernon 1956), and TEX. INS. CODE ANN. art. 21.23 (Vernon 1963) (Texas); UTAH CODE ANN. § 75-2-804 (1978) (Utah); VT. STAT. ANN. tit. 14, § 551(6) (1974) (Vermont); VA. CODE § 64.1-18 (1973) (Virginia); WASH. REV. CODE ANN. §§ 11.84.010 to .900 (1967) (Washington); W. VA. CODE § 42-4-2 (1966) (West Virginia); WYO. STAT. § 2-3-111 (1977) (Wyoming). *See* Appendix for analysis of statutes' contents.

217. *See* notes 2-7 and accompanying text *supra*.

218. Owens v. Owens, 100 N.C. 240, 242, 6 S.E. 794, 795 (1888).

219. Riggs v. Palmer, 115 N.Y. 506, 22 N.E. 118 (1889). In *Riggs*, the court refused to follow *Owens* and denied a murderer property rights under a will. *See* notes 2-5 and accompanying text *supra*.

220. Owens v. Owens, 100 N.C. 240, 242, 6 S.E. 794, 795 (1888).

221. N.C. Sess. Laws ch. 499, *amending* N.C. Sess. laws ch. 193 § 44, *formerly codified as* N.C. GEN. STAT. § 30-4 (repealed 1959), states:

> Who entitled to dower—Widows shall be endowed as at common law as in this chapter defined. Provided, if any married woman shall commit adultery, and shall not be living with her husband at his death, or shall be convicted of the felonious slaying of her husband, or being accessory before the fact to the felonious slaying of her husband, she shall thereby lose all right to dower in the lands and tenements of her husband; and any such adultery or conviction may be pleaded in bar of any action or proceeding for the recovery of dower.

See Walsh, *Decedent's Estates—Forfeitures of Property Rights by Slayers*, 12 WAKE FOREST L. REV. 448 (1976). *See also In re* Kuhn, 125 Iowa 449, 101 N.W. 151 (1906).

regarding murdering heirs has undergone considerable change. From a single statute, broadly written and dealing only with marital property rights, North Carolina's law is currently controlled by a multiple statute with twenty subsections.[222] Unlike the original statute, the latest statute applies to any person who is convicted, pleads guilty, or pleads nolo contendere to killing another person.[223] Instead of marital property, the current statute deals with vested and contingent remainders, joint tenancies, tenancies by the entirety, insurance, statutory shares, and vested remainders or reversions with a life estate in a third person.[224]

Unlike North Carolina, the statutes in Illinois and Louisiana have undergone little change. The legislatures have amended the originally enacted statutes only in minor ways. These two statutory schemes, however, could not be more different. In Illinois, the two statutes were enacted in 1939 and address, respectively, descent and distribution[225] and wills.[226] The statutes are broadly phrased and have the same effect—when a person is convicted of murdering another person, that person's interest in the decedent's estate is void and the interest passes as if the murderer died before the decedent.[227] Louisiana's statute, however, was originally enacted between 1804 and 1825, amended in 1870, and has fourteen subsections.[228] Like the Illinois statutory scheme, Louisiana's statutes cover convictions of murderers, but they also apply when a person has been convicted of attempting to kill another,[229] has subjected a decedent to a capital punishment for a calumnious remark,[230] or has not brought a murderer to justice.[231] Like North Carolina's and Illinois' laws, Louisiana does not allow a murderer to inherit,[232] but, like North Carolina's law, Louisiana's statute specifies particular circumstances that may arise in conjunction with a murdering heir.[233]

In general, the clear trend among the fifty states and the District of Columbia is toward a statutory scheme that is both broadly stated and yet addresses the major concerns of a decedent's heirs. The most noteworthy example of this trend is the promulgation and adoption over the last

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222. *See* the North Carolina statute, cited in note 216 *supra*.

223. *Id.* § 31A-3.

224. *Id.* §§ 31A-5 to -11.

225. ILL. REV. STAT. ch. 110-1/2, § 2-6 (1977).

226. *Id.* § 4-12.

227. *Id.* §§ 2-6, 4-12.

228. *See* the Louisiana statute, cited in note 216 *supra*.

229. *Id.* art. 966 (1).

230. *Id.* art. 966 (2).

231. *Id.* art. 966 (3).

232. *Id.* art. 964-66. Louisiana refers to a murdering heir as one who is "unworthy," one who "by failure in some duty towards a person, have not deserved to inherit from him, and are in consequence deprived of his succession." *Id.* art. 964.

233. *Id.* art. 969-71. These statutes address such situations as restitution, sales, and mortgages made by an unworthy heir.

twenty years of section 2-803 of the Uniform Probate Code.[234] Officially adopted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1969,[235] section 2-803 was the result of a seven year project by the ABA Section on Property, Probate and Trust Law.[236] The UPC seeks to simplify and clarify probate law, to make effective a decedent's intent, to promote a speedy and effective system for liquidating an estate, and to make uniform the laws of the different United States jurisdictions.[237]

Section 2-803 appears to be a compromise between the divergent statutory schemes as illustrated by North Carolina and Illinois—between a broadly-phrased single statute and a more specific, multiple statute. The UPC has had a wide effect, with twelve states adopting section 2-803,[238]

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234. UNIFORM PROBATE CODE § 2-803. *See generally* Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453 (1970). In full, section 2-803 states:

(a) A surviving spouse, heir or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies [and tenancies by the entirety] in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of co-ownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(d) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(e) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing the Court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(f) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

235. NATIONAL CONF. OF COMM'RS ON UNIFORM STATE LAWS, UNIFORM PROBATE CODE (1969). *See* Zartman, *Uniform Probate Code—Policies and Practices*, 61 ILL. B. J. 428 (1973); Curry, *West Virginia and the Uniform Probate Code: An Overview*, 76 W. VA. L. REV. 111 (1974).

236. *See* Davis, *The New North Dakota Probate Code*, 49 N.D. L. REV. 563 (1972). This section of the American Bar Association also drafted a Model Probate Code in 1946. *See* L. SIMES & P. BAYSE, PROBLEMS IN PROBATE LAW: MODEL PROBATE CODE (1976).

237. UNIFORM PROBATE CODE § 1-102(b). *See* Wellman & Gordon, *Uniformity in State Inheritance Laws: How UPC Article II Has Fared in Nine Enactments*, 1976 B.Y.U. L. REV. 357, (1976). The authors strongly argue in favor of the Uniform Probate Code due to the need for national uniformity. *Cf.* Semerad, *The Uniform Probate Code and New York Law Compared*, 48 N.Y. STATE B.J. 96 (1976). The author states that uniformity for its own sake has no value. *Id.* at 97.

238. *See* the Alaska, Arizona, Colorado, Hawaii, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, New Mexico, and Utah statutes, cited note 216 *supra*.

California rejecting it,[239] South Dakota adopting and then repealing it,[240] and an additional eleven states either amending existing statutes or enacting new statutes since 1969.[241] Currently, besides the twelve UPC states, eight states lack any statutory provisions on murdering heirs,[242] twenty-one states have a single statute,[243] and ten states plus the District of Columbia have a multiple statutory scheme.[244]

Legislative activity also has resulted from the refusal of state courts to read an exception into the general provisions on descent and distribution, which would allow a murdering heir to inherit. For example, in Kansas the legislature enacted its statute after a state court refused to disallow an inheritance.[245] Similar histories appeared in other states.[246] In addition, amendments to existing statutes on murdering heirs also resulted from court inaction. For example, in Iowa the supreme court characterized the then existing statute on murdering heirs as penal and strictly interpreted it, refusing to extend its operation to spousal shares.[247] Thereafter, Iowa's legislature revised the statute to include "any interest in the estate of the decedent as surviving spouse."[248]

The courts' refusal to read exceptions into the general laws of descent and distribution or into broadly stated statutes on murdering heirs stems

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239. *See* Guther, *The Impending Probate Reform*, 48 CAL. ST. B.J. 417 (1973); Comment, *Articles II and III of the Uniform Probate Code as Enacted in Utah*, 1976 B.Y.U. L. REV. 425, 426 n.10. The UPC met resistance because it "attempts to simplify many aspects of probate laws by changing traditional practices." *Id.* at 426.

240. Wellman & Gordon, *Uniformity in State Inheritance Laws: How UPC Article II Has Fared in Nine Enactments*, 1976 B.Y.U. L. REV. 357, 358. The statute was adopted in 1975 and repealed in 1976. *Id.*

241. Seven states amended existing statutes. *See* the Connecticut, Indiana, Kansas, Oklahoma, Pennsylvania, South Dakota, and Virginia statutes, cited in note 216 *supra*. Four states enacted new legislation. *See* the Florida, Idaho, Ohio, and Tennessee statutes, cited in note 216 *supra*. *See generally* Bruckin, *The Uniform Probate Code and The Practice of Law in Ohio*, 7 AKRON L. REV. 69 (1973); Wellman & Gordon, *Uniformity in State Inheritance Laws: How UPC Article II Has Fared in Nine Enactments*, 1976 B.Y.U. L. REV. 357, 358.

242. *See* the Alabama, Delaware, Maine, Massachusetts, Missouri, New Hampshire, New York, and Wisconsin statutes, cited in note 216 *supra*.

243. *See* the Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Vermont, West Virginia, and Wyoming statutes, cited in note 216 *supra*.

244. *See* the District of Columbia, Idaho, Louisiana, Mississippi, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, and Washington statutes, cited in note 216 *supra*.

245. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715 (1936).

246. *Id.* at 716. Wade states that "in most of the jurisdictions in which the courts refused to engraft an exception, a statute rectifying the omission was passed shortly thereafter." *Id.* He then listed, as examples, the states of California, Kansas, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania and West Virginia. *Id.* at 716 n.7.

In Pennsylvania, the legislature enacted its statute after the court in *In re* Carpenter's Estate, 170 Pa. 203, 32 A. 637 (1895), allowed a son who murdered his father to inherit. Another example is Washington, in which the legislature responded to the decision in *In re* Duncan's Estate, 40 Wash. 2d 850, 246 P.2d 445 (1952), with 1955 Wash. Laws ch. 141, 613, which prohibited a person from inheriting from an heir whom he or she had murdered.

247. *See* Kuhn v. Kuhn, 125 Iowa 449, 101 N.W. 151 (1904).

248. 1902 Iowa Acts ch. 135, § 1. *See generally* Note, 7 IOWA L. BULL. 111, 113 (1922).

from their reluctance to engage in judicial legislation. Many examples appear.[249] A recent example is *Blanks v. Jiggets*,[250] in which the Virginia Supreme Court allowed a son who murdered his father to acquire a remainder interest that had vested under his mother's will. Strictly interpreting the applicable statute, the court allowed the son to benefit from the shortened life estate "because this statute does not prohibit it."[251] Although calling the son's actions reprehensible,[252] the court believed it had no choice.[253]

In other words, the real problem is the division of responsibility between courts and legislatures. Legislatures can state the rules that courts can then interpret. The rules would be developed by the legislatures that have the resources for research and study, the opportunity for public hearings, and the ability to state public policy rather than interpret the law.[254] Legislative action would also give better notice to the public about the rule of law in that jurisdiction[255] and give the public an opportunity to express its wishes in public hearings.

The courts would then have two roles. First, the courts determine the constitutionality of the statutes in light of the federal and state constitutions. Second, the courts interpret the rules to find specific solutions based on the facts and arguments in particular cases.[256] The constitutional issues addressed by courts have involved special legislation, corruption of blood, forfeiture of estates, and double jeopardy.

First, courts consistently have ruled that these statutes apply uniformly to all members of a class and are therefore general, not special, legislation approved by the state's constitution.[257] Legislatures clearly have the power to control the manner in which property descends and can subject inheritance to preconditions.[258] Second, the statutes do not corrupt the murdering heir's blood because his or her heirs can inherit; only the murdering heir cannot take an interest in an illegal manner.[259] In addition, one court examined the purpose of the doctrine of corruption of blood and stated that it prohibits governmental oppression through the confiscation

249. *See, e.g.*, Shellenberger v. Ransom, 41 Neb. 631, 59 N.W. 935 (1894); *In re* Gwynn's Estate, 239 Pa. 238, 86 A. 789 (1913).

250. 192 Va. 337, 64 S.E.2d 809 (1951).

251. *Id.* at 342, 64 S.E.2d at 812.

252. *Id.* at 343, 64 S.E.2d at 812.

253. *Id.*

254. McGovern, *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 107 (1969). *See* Bolich, *Acts Barring Property Rights*, 40 N.C. L. REV. 175, 186 (1962).

255. McGovern, *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 106 (1969).

256. *Id.* at 108.

257. See, e.g., Wilson v. Bates, 231 S.W.2d 39 (Ky. 1950).

258. *See, e.g.*, Kochersperger v. Drake, 167 Ill. 122, 47 N.E. 321 (1897); McKay v. Lauriston, 204 Cal. 557, 269 P. 519 (1928).

259. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 721 (1936). *See, e.g.*, Hamblin v. Murchant, 103 Kan. 508, 175 P. 678 (1918), *aff'd on reh.*, 104 Kan. 689, 180 P. 811 (1919).

of property.[260] Because the murdering heir statute involves the taking of property by only private citizens and protects the decedent's property from being taken illegally, the statute is constitutional.[261]

Third, the statutes do not work a forfeiture of an estate. As the Tennessee Supreme Court stated, the constitutional prohibition cannot operate on an estate in property that a murdering husband has never acquired under statute.[262] As the Missiouri Supreme Court stated, the statute takes nothing from the murderer; it simply states that an interest in property cannot be acquired in a certain way.[263]

Finally, the editorial board of the Uniform Probate Code's section on murdering heirs addressed the problem of double jeopardy, which arises because both criminal and civil courts will determine whether a person has murdered a decedent and the applicable punishment. Different considerations and a different burden of proof, however, are used in determining guilty or acquittal. Specifically, the editorial board pointed to other legal questions that also arise in both criminal and civil courts, including wrongful death cases and tax fraud cases.[264]

VII. STATUTORY ANALYSIS

The fifty-one American jurisdictions that comprise this study deal with the problem of murdering heirs in a diverse manner. The jurisdictions differ on the need for a statute, the type of statutory scheme enacted, and the content of the statute enacted. Even with these differences, however, the statutes share many characteristics. Specific provisions appear in many states; and although the jurisdictions may not enact the same language, the statutory language may have the same effect. Therefore, the real questions become first, whether any difference exists among the American jurisdictions and second, whether any specific statutory scheme or language is best to meet the general goal of not rewarding a murdering heir.

A. *Content Generally*

The forty-three currently existing statutory schemes that address the problem of a murdering heir possess one or more of seven elements. These

260. Houser v. Haven, 32 Tenn. App. 670, 225 S.W.2d 559 (1949).

261. *Id.* at 671, 225 S.W.2d 559.

262. Beddington v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907). The court stated that the statute would not apply to deprive a husband from inheriting property held by the entireties, because the title vested in him by conveyance and not by a wife's death. *Id.* at 45, 100 S.W. at 111.

263. Grose v. Holland, 357 Mo. 874, 211 S.W.2d 464 (1948). The court disagreed with the result in Beddington v. Estill & Newman, 118 Tenn. 39, 100 S.W. 108 (1907), *see* note 262 *supra*, and stated that the statute is constitutional because a husband would acquire property held by the entireties after a wife's death.

264. UNIFORM PROBATE CODE § 2-803, Editorial Board Comment. *See also* Lugar, *Criminal Law, Double Jeopardy & Res Judicata*, 39 IOWA L. REV. 317 (1954); Horack, *The Multiple Consequences of a Single Criminal Act*, 21 MINN. L. REV. 805 (1937); Curry, *Intestate Succession and Wills: A Comparative Analysis of Article II of the Uniform Probate Code and the Law of Ohio*, 34 OHIO ST. L. J. 114 (1973).

elements consist of language mandating the (a) appropriate statutory construction, (b) interested parties, (c) applicable criminal activity, (d) role of the probate court and whether a court's decree should be recorded, (e) form of transfer, and (f) type of property interests effected.[265] As indicated in chart I, the jurisdictions almost unanimously specify the interested parties in a statute. The jurisdictions also agree on the need to specify the applicable criminal activity, the form of transfer, and the type of property interest involved in a transfer. The jurisdictions disagree, however, on the need to mandate the judicial construction of their statutory scheme; only Idaho, Pennsylvania, Rhode Island, South Dakota, and Washington include such a mandate.[266] Similarly, only Connecticut requires that an executor or administrator record an adjudication of a murdering heir's guilt.[267] Finally, the states are almost evenly split regarding the need to state the role of the probate courts.

CHART I. CONTENT OF STATUTES

Content	*Number of Jurisdictions*
Construction of Statute	5
Interested Parties	43
Criminal Activity	42
Role of the Probate Court	37
Recording	1
Form of Transfer	38
Type of Property Interest	39

Within each of these categories, the specific provisions may be either general, specific, or both general and specific in scope. The differentiation between general and specific language appears in the categories of interested parties and the type of property interest specified. As chart II indicates, most jurisdictions have both general and specific provisions in the same statutory scheme. This fact appears in both categories—a majority when specifying the type of property interest to be transferred after a decedent's death; an equal amount of specific provisions when specifying the interested parties involved in a transfer of property interests.

B. *Statutory Schemes*

Although the jurisdictions with statutes freely enact the statutory scheme they believe best meets the needs of their citizens, several statutory schemes have been enacted by more than one legislature. The two most common are section 2-803 of the Uniform Probate Code[268] and the Wade

265. *See* Appendix II *infra.*

266. *See* the Idaho, Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra.*

267. *See* the Connecticut statute, cited in note 216 *supra.*

268. UNIFORM PROBATE CODE § 2-803. *See* note 234 *supra.*

CHART II. STATUTORY LANGUAGE

Type/Category	*Number of Jurisdictions*
General Provisions Only	
Interested Parties	11
Type of Property Interest	10
Specific Provisions Only	
Interested Parties	16
Type of Property Interest	2
Both	
Interested Parties	16
Type of Property Interest	27

Model.[269] Other jurisdictions have added to these two models, and many others have single statutes that are unique to that individual jurisdiction.

The Uniform Probate Code's section has six parts.[270] The first three subsections describe the rules for inheritance under a will or intestate succession, transfer under a joint tenancy, and benefits acquired under contract, respectively. The fourth subsection expands the rule enunciated in the previous subsections and applies it to "[a]ny other acquisition of property or interest."[271] It is a broad, general provision that covers any and all contingencies not covered in the previous subsections. Subsection five delineates the effect of a conviction in a probate court and specifies that court's role. Finally, the section protects innocent purchasers for value who had no notice of the decedent's death and other payees who may unknowingly transfer a decedent's property interest to a murdering heir. In general, the scheme is both general and specific, seeking to cover specifically the most common contingencies and to apply generally to all types of property interests.

Unlike the Uniform Probate Code's section, several jurisdictions have enacted a more specific and detailed statutory scheme. Seven states—Idaho, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington—have enacted a statutory scheme similar to one appearing in a Harvard Law Review article by Professor John W. Wade.[272] Like the UPC section, this scheme also specifically addresses transfer by will, intestate succession, joint tenancy, and insurance. Unlike UPC section 2-803, however, the statute clearly defines the terms "slayer," "decedent," and "property." It also delineates specific rules for many types of property interests, including joint tenancies consisting of the slayer, decedent, and a third party, tenancies by the entirety, reversions, contingent

269. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 753-55 (1936). The states of Idaho, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington have adopted the Wade Model.

270. UNIFORM PROBATE CODE § 2-803. *See* note 234 *supra*.

271. UNIFORM PROBATE CODE § 2-803(d).

272. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 753-55 (1936).

and vested remainders, and even interests to be divested by powers of appointment and revocation.[273]

Opposite these extensive and specifically worded statutes are the single provision statutory schemes. Constituting almost a majority of jurisdictions, these states broadly declare the public policy that a murdering heir shall not benefit from his or her wrongdoing.[274] Examplifying this scheme is California's statute, which simply states that "[n]o person who has unlawfully and intentionally caused the death of a decedent . . . shall be entitled to succeed to any portion of the estate."[275] By a broad interpretation of this language, however, California law includes many, if not all, of the sanctions against murdering heirs as does a Wade or UPC jurisdiction.[276] Thus, the type of statutory scheme enacted may be less important than exactly what is included within the enactments and how they are interpreted by the courts of the jurisdiction.

C. *Content Specifically.*

The chart in Appendix II clearly illustrates the wide divergence among the jurisdictions concerning the specific legislative enactments. Although some provisions appear in several states and the enactment UPC section 2-803 has created some uniformity, many differences still remain. An analysis of each type of provision, therefore, is useful to guide future legislatures in the enactment of comprehensive yet useful statutes.

1. *Statutory Construction*

Only five of the fifty-one jurisdictions specifically mention how courts should construe the statutes. The provisions in Idaho, Pennsylvania, Rhode Island, South Dakota, and Washington are nearly identical. They state that courts should not consider that the statutes are penal in nature and that they should be broadly construed to effectuate the public policy against allowing murdering heirs a benefit from their wrongdoings.[277]

2. *Interested Parties*

State legislatures have identified two general categories of interested parties—those directly involved in the homicide and innocent third parties. Those directly involved can be identified either generally or specifically. As chart III indicates, twenty-seven jurisdictions refer simply to "any" person. The five specific categories of surviving spouse, heir, devisee, joint tenant, and beneficiary are stated by the UPC and several other jurisdictions. For example, sixteen jurisdictions identify beneficiaries of an insur-

273. *See* the Idaho, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra.*

274. *See, e.g.*, the Illinois statute, cited in note 216 *supra.*

275. *See* the California statute, cited in note 216 *supra.*

276. *Id.*

277. *See* the Idaho, Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra.*

ance policy or other contractual arrangement. These are the UPC states plus Kentucky, Iowa, Texas, and Wyoming.[278]

Besides those that are directly involved in a homicide, many jurisdictions have specifically protected two classes of persons. These are first, persons who purchase property from a murderer for value and without notice of the homicide, and second, an insurance company or any other financial institution or person who, without notice of a claim, makes a payment to a slayer according to the terms of a policy or other legal obligation. Fifteen of the jurisdictions that broadly state the person directly involved in a homicide also protect either one or both of these innocent third parties.[279]

CHART III. INTERESTED PARTIES

Category	*Number of Jurisdictions*
Any	27
Surviving Spouse	13
Husband	1
Wife	1
Heir	13
Devisee	12
Joint Tenant	13
Beneficiary	16
Bona Fide Purchaser	23
Contractual Obligors	22
Parent Who Kills Child	1

3. *Criminal Activity*

Unlike the statutory provisions relating to interested parties, the jurisdictions differ when specifying the criminal activities that trigger a statute's application. Statutes may include statements describing the nature of a slayer's action, a slayer's intent, and a slayer's participation in a decedent's death. Twenty-five jurisdictions, including the UPC jurisdictions, limit application of their statutes to felonious or unlawful slayings.[280] Therefore, justifiable and excusable homicides will not be affected by the statutes and a person committing such an act will be able to inherit property interests from a decedent.[281] In fact, three states specifically

278. *See* the Kentucky, Iowa, Texas, and Wyoming statutes, cited in note 216 *supra.*

279. *See* the District of Columbia, Georgia, Idaho, Indiana, Louisiana, Mississippi, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and Wyoming statutes, cited in note 216 *supra.*

280. *See* Alaska, Arizona, California, District of Columbia, Hawaii, Idaho, Iowa, Kansas, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming statutes, cited in note 216 *supra.*

281. *See* W. LAFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW (1972). The authors list ignorance, defense of self, public duty, necessity, and other acts as justifications and excuses for a homicide. *Id.* at 356-413.

exclude certain types of slayings—Georgia and Tennessee for accidental deaths or deaths resulting from self-defense,[282] South Carolina for involuntary manslaughter[283]—and Louisiana allows succession to property if a decedent has knowledge of the injury done to him or her and dies without disinheriting the slayer, even though there was sufficient time to change a will.[284]

Besides the general type of criminal activity, jurisdictions specify the slayer's mens rea and actus rea.[285] The UPC's section states that the slayer must intend to slay the decedent.[286] Twelve other jurisdictions agree, either using the term "intent" or "willful" to describe the slayer's mens rea.[287] Other jurisdictions presuppose the existence of the element of intent by requiring a conviction before the statute applies.[288]

Although only twenty-four jurisdictions specify that a slayer must intend or willfully kill or cause a decedent's death,[289] all of the jurisdictions indicate the actus reas. This has been done either generally or specifically. The UPC states generally that a slayer must have "killed" the decedent.[290] Seven of the UPC jurisdictions have adopted this general language,[291] but five others have added specific crimes to this provision.[292] For example, Colorado's statute specifies murder in the first and second degrees and manslaughter,[293] New Mexico specifies "capital felonies" and felonies in the first and second degree.[294] Of the remaining thirty jurisdictions, nineteen include only a general reference such as "kill" or "cause",[295] ten specifically identify the possible crimes,[296] and Arkansas has both general and specific statements.[297]

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282. *See* the Georgia and Tennessee statutes, cited in note 216 *supra*.

283. *See* the South Carolina statute, cited in note 216 *supra*.

284. *See* the Louisiana statute, cited in note 216 *supra*.

285. LAFAVE & SCOTT, HANDBOOK ON CRIMINAL LAW 191-92 (1972).

286. *See* UNIFORM PROBATE CODE § 2-803(a), adopted in Alaska, Arizona, Colorado, Hawaii, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, and Utah.

287. *See* the California, Georgia, Idaho, Mississippi, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, and Washington statutes, cited in note 216 *supra*.

288. *See, e.g.*, the Arkansas, Connecticut, and District of Columbia statutes, cited in note 216 *supra*.

289. *See* notes 286-87 *supra*.

290. *See* UPC § 2-803(a).

291. *See* the Alaska, Arizona, Minnesota, Montana, New Jersey, North Dakota, and Utah statutes, cited in note 216 *supra*.

292. *See* the Colorado, Hawaii, Michigan, Nebraska, and New Mexico statutes, cited in note 216 *supra*.

293. *See* the Colorado statute, cited in note 216 *supra*.

294. *See* the New Mexico statute, cited in note 216 *supra*. *See also* the Hawaii (murder and voluntary manslaughter), Michigan and Nebraska (aid and abet) statutes, cited in note 216 *supra*.

295. *See* the Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Oregon, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wyoming statutes, cited in note 216 *supra*.

296. *See* the California, Connecticut, District of Columbia, Florida, Illinois, Indiana, Nevada, Ohio, Oklahoma, and Virginia statutes, cited in note 216 *supra*.

297. *See* the Arkansas statute, cited in note 216 *supra*.

The specific provisions range from murder in the first and second degrees, voluntary manslaughter, and a slaying occurring during a felony to anyone who conspires, attempts, aids and abets, procures, causes a suicide, or is a principal or accessory before the fact. Those states adopting the Wade Model refer only to taking or procuring a death[298] or, as in Idaho and North Carolina, participating as a principal or accessory before the fact.[299]

4. *Probate Court*

Before a probate court can apply the statutory provisions relating to murdering heirs, many states require action by the jurisdiction's criminal justice system. Thirty-four jurisdictions either require a criminal conviction or assert that, as a rule of law, a final judgment of conviction is conclusive for the applicability of the statute.[300] These thirty-four include the UPC states, which also, in the absence of a conviction, grant a court the power to determine, by a preponderance of the evidence, whether a slaying was felonious and intentional. Other jurisdictions require either a conviction, a plea of guilty, or the entering of a plea of nolo contendere[301] and a conviction and sentence.[302] In California, an acquittal may be proof of the lawfulness of a killing,[303] but, in Louisiana, the statute applies even if the slayer is pardoned.[304] Besides these provisions, the statutes require no other rules for the probate court.

Besides requiring certain procedures, Connecticut states that the slayer's rights shall be determined by the common law, including equity.[305] Six states permit the record of a conviction to be admitted in a civil action against a slayer.[306] Louisiana requires that a court specifically declare an heir to be "unworthy" to inherit[307] and limits suits under the statute only to "relations who are called to the succession in default of the unworthy heir."[308] And, Connecticut requires that a certified copy of the final adjudication of guilty to a charge of murdering a decedent be recorded in the land records of the towns in which real property in a decedent's estate is situated.[309]

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298. *See, e.g.*, the Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra*.

299. *See* the Idaho and North Carolina statutes, cited in note 216 *supra*.

300. *See* Appendix II *infra*.

301. *See, e.g.*, the Colorado statute, cited in note 216 *supra*.

302. *See, e.g.*, the Texas statute, cited in note 216 *supra*.

303. *See* the California statute, cited in note 216 *supra*.

304. *See* the Louisiana statute, cited in note 216 *supra*.

305. *See* the Connecticut statute, cited in note 216 *supra*.

306. *See* the Idaho, North Carolina, Rhode Island, South Dakota, Vermont, and Washington statutes, cited in note 216 *supra*.

307. *See* the Louisiana statute, cited in note 216 *supra*.

308. *Id.*

309. *See* the Connecticut statute, cited in note 216 *supra*.

5. *Form of Transfer*

Almost all of the states specify the type of transfers that the statute affects. Transfers can be intestate, by will, by deed, or by contract. Contractual arrangements include insurance policies, bonds, pensions, profit-sharing plans, annuities, and payments from benevolent organizations. Chart IV shows the jurisdictions' activities for these categories. The UPC section on murdering heirs identifies transfer by intestate succession, will, or contract, including life insurance, bond, and any other forms.[310] Other jurisdictions agree and also identify wills and intestate succession, but they disagree when stating other forms. Instead of identifying life insurance policies, ten jurisdictions prefer the broader term "insurance."[311] North Carolina identifies annuities,[312] and Oregon lists pensions, profit sharing plans, and payments from benevolent organizations.[313] Finally, Georgia and Tennessee include transfer by deed.[314]

CHART IV. TYPE OF TRANSFER

	Number of Jurisdictions:		
Type	*Total*	*UPC*	*Other*
Intestate	32	12	20
Will	35	12	23
Contract	28	11	17
Insurance	10		10
Life Insurance	17	11	6
Bond	10	10	
Other	11	11	
Annuity	1		1
Pension	1		1
Profit Sharing	1		1
Benevolent Organization	1		1
Deed	2		2

No matter what type of transfer is identified by statute, the rules for distributing the property are similar and have the same general effect. In general, the jurisdictions do not allow the slayer to inherit any of the property. Provisions of wills are voided, as in Illinois and Mississippi,[315] the property transferred goes into the decedent's estate, as in South Carolina,[316] or, as in the UPC and other states, the murdering heir is

310. UNIFORM PROBATE CODE § 2-803. *See* note 234 *supra.*

311. *See* the District of Columbia, Georgia, Iowa, Kentucky, North Carolina, Ohio, Oklahoma, South Carolina, West Virginia, and Wyoming statutes, cited in note 216 *supra.*

312. *See* the North Carolina statute, cited in note 216 *supra.*

313. *See* the Oregon statute, cited in note 216 *supra.*

314. *See* the Georgia and Tennessee statutes, cited in note 216 *supra.*

315. *See* the Illinois and Mississippi statutes, cited in note 216 *supra.*

316. *See* the South Carolina statute, cited in note 216 *supra.*

considered to have predeceased the decedent so that other heirs will succeed to the property.[317]

Other than these general rules, however, special statutes include rules for distributing insurance benefits or proceeds from other contractual arrangements. Although the clear majority of jurisdictions do not allow the murdering beneficiary to take any property interest by providing that the beneficiary predeceases the insured, other options appear. In Oregon, for example, the benefits will go to a secondary beneficiary.[318] Idaho's statute agrees, but also allows the benefits to go into a decedent's estate.[319] In addition, the benefits go to the decedent's estate in North Carolina, Oregon, Pennsylvania, and Rhode Island if the decedent was the primary beneficiary.[320] Finally, only Ohio's statute requires the creation of a constructive trust for the benefits.[321]

6. *Type of Property Interest*

Like the provisions for interested parties, the provisions specifying the types of property interests to which a slayer may be entitled are either general or specific. The jurisdictions that have adopted the UPC's section have their own provisions, many of which appear in non-UPC jurisdictions. In addition, several states have enacted specific provisions to deal with special problems that may arise.

Of the thirty-eight jurisdictions having any provision on property interests, only ten have just a general, broadly stated provision.[322] Two jurisdictions have only specific provisions,[323] and the remaining twenty-six jurisdictions have enacted both general and specific provisions.[324] The Uniform Probate Code is an example. It contains three provisions—one relating to joint tenancies, one for property appointed by will, and one general provision relating to "[a]ny other acquisition of property or interest by the killer."[325] The provision on joint tenancies is made applicable to real and personal property, joint accounts in financial institutions

317. *See* the Alaska, Arizona, Colorado, District of Columbia, Florida, Hawaii, Idaho, Illinois, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Washington, and West Virginia statutes, cited in note 216 *supra.*

318. *See* the Oregon statute, cited in note 216 *supra. Accord* Connecticut, Kentucky, Oklahoma, Texas, Utah, and Wyoming statutes, cited in note 216 *supra.*

319. *See* the Idaho statute, cited in note 216 *supra.*

320. *See* the North Carolina, Oregon, Pennsylvania, and Rhode Island statutes, cited in note 216 *supra.*

321. *See* the Ohio statutes, cited in note 216 *supra.*

322. *See* the Georgia, Illinois, Indiana, Maryland, Mississippi, Nevada, Ohio, Texas, Vermont, and West Virginia statutes, cited in note 216 *supra.*

323. *See* the Arkansas and District of Columbia statutes, cited in note 216 *supra.*

324. *See* the Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Iowa, Kansas, Kentucky, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Washington statutes, cited in note 216 *supra.*

325. UNIFORM PROBATE CODE § 2-803.

and "any other form of co-ownership with survivorship incidents."[326] In addition to these provisions, several UPC jurisdictions have made their statutes applicable to tenancies by the entireties[327] and, in New Mexico, to community property and any other future interest.[328]

Those jurisdictions that have adopted the Wade Model[329] also include provisions on property interests in general, insurance, joint tenancies, tenancies by the entireties, and property subject to powers of appointment.[330] These jurisdictions, however, have enacted other provisions on property jointly held by three or more persons, reversions, vested and contingent remainders, executory interests, interests in property to be divested, and any exercise of a power of appointment.[331] Other miscellaneous enactments deal with statutory shares,[332] dower and curtesy rights,[333] intermediate estates,[334] and trust property.[335]

The rules for distributing the decedent's property interests are comparable from jurisdiction to jurisdiction. In most jurisdictions, the statutes do not permit a slayer to benefit from his or her wrongdoing and treat the slayer as predeceasing the decedent.[336] For joint tenancies and tenancies by the entireties, the statutes sever the relationships so that the decedent's heirs inherit or take the property that would have gone to the slayer by right of survivorship.[337] These provisions appear most frequently in the Uniform Probate Code jurisdictions and are used by other jurisdictions who have only broadly stated statutes. As such, they help fulfill the Uniform Probate Code's goal of increasing the transferability of property interests and the expeditious closing of estates.[338] Other examples include Idaho's provisions that distribute remainders, reversions, and powers of appointment to the decedent's estate or to qualified third parties.[339] Also, Indiana provides that property which would have been taken by a slayer be placed in a constructive trust.[340]

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326. *Id.*

327. *See* the Alaska, Hawaii, Michigan, Nebraska, New Jersey, New Mexico, North Dakota, and Utah statutes, cited in note 216 *supra.*

328. *See* the New Mexico statute, cited in note 216 *supra.* Washington's statute also contains a provision on future interests.

329. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715 (1936).

330. *See, e.g.*, the Idaho, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra.*

331. *Id.*

332. *See* the Idaho, Iowa, North Carolina, Pennsylvania, Rhode Island, and South Dakota statutes, cited in note 216 *supra.*

333. *See* the Arkansas, Oregon, and Rhode Island statutes, cited in note 216 *supra.*

334. *See* the Connecticut statute, cited in note 216 *supra.*

335. *See* the Oregon statute, cited in note 216 *supra.*

336. *See, e.g.*, the Alaska, California, and North Carolina statutes, cited in note 216 *supra.*

337. *See, e.g.*, the Connecticut, Hawaii, and New Jersey statutes, cited in note 216 *supra.*

338. *See* note 237 *supra.*

339. *See* the Idaho statute, cited in note 216 *supra.*

340. *See* the Indiana statute, cited in note 216 *supra.*

CHART V. TYPE OF PROPERTY

	Number of Jurisdictions:		
Provision	*Total*	*UPC*	*Other*
General	38	12	26
Joint Tenancy—slayer & decedent	22	12	10
—slayer, decedent, third party	5		5
Tenancy by Entirety	11	8	3
Property Subject to Power of Appointment	16	12	4
Exercise of Power of Appointment	5		5
Statutory Share	6		6
Dower/Curtesy	3		3
Intermediate Estate	1		1
Trust Property	1		1
Interest to be Divested	5		5
Interest Subject to a Class	4		4
Remainder	2		2
Vested Remainder	6		6
Vested Remainder or Reversion with Life Estate in Third Person	3		3
Contingent Remainder	6		6
Reversion	7		7
Executory Interest	6		6
Remainder Subject to a Power of Appointment	5		5
Community Interest	2		2
Future Interest	2		2

Unlike these provisions are those in North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington, states that have adopted parts of the Wade Model. According to their statutes, part of the property interests held jointly, by the entireties, or that are to be divested are held by the slayer for life and then transferred to the decedent's estate.[341] Similarly, vested remainders or reversions with a life estate in a third party are transferred to the decedent's estate or to a third party to hold for the decedent's life expectancy.[342] Regular reversions are also transferred to the decedent's estate or heirs for a period equalling the decedent's life expectancy.[343] Clearly, such complicated provisions can lead only to confusion and a prolonged probate process.

341. *See, e.g.*, the Washington statute, cited in note 216 *supra*.

342. *See, e.g.*, the North Carolina, Oregon, Pennsylvania, and Rhode Island statutes, cited in note 216 *supra*.

343. *Id.*

In sum, the jurisdictions having statutes that address the problem of murdering heirs are diverse in structure and approach. Some statutes are general in scope and language. Others provide specific rules for a myriad of contingencies. Three general approaches do appear. Twelve states have adopted the UPC's section 2-803, which includes both general and specific provisions but which distributes the decedent's property quickly and efficiently by providing that the slayer is deemed to have predeceased the decedent. Several states have adopted, in part, the Wade Model, which also includes general and specific provisions. Instead of the UPC, however, these statutes include many more contingencies concerning interested parties, the form of the transfer, and especially the type of property involved. In addition, the Wade Model may cause problems by measuring the length of time an heir can hold property by the decedent's life expectancy and by specifying other rules that may lengthen the period of probate for the decedent's estate. Finally, the majority of jurisdictions have opted either to maintain or amend their previously enacted statutes, which are mostly short and broadly stated. As a result, the statutory law in the United States lacks uniformity in structure and, to a certain extent, in content and substance. Finally, the Wade Model and the UPC section have not been widely adopted, raising the question that they may not adequately address the issues and needs of the state legislatures and the possibility that an alternative to them is necessary.

VIII. PROPOSED STATUTORY SCHEME

Any proposed statutory scheme seeks to effectuate a jurisdiction's public policy. Unlike courts, legislative bodies do not examine its citizens' behaviors in a piecemeal, case-by-case manner. Instead, a legislature is uniquely equipped to determine and promulgate rules and guidelines through research, study, public hearings, and debate.[344] These rules give notice to citizens about their required behavior. They also provide guidance to the jurisdiction's court system concerning the standards it should apply when faced with a situation falling within the legislation.

More specifically, a statute on murdering heirs should seek to fulfill the public policy that no person shall benefit from his or her own wrong—*nullus commodum capere potest de injuria sua propria*.[345] The statute should also attempt to fulfill the decedent's intent—that his or her murderer should not inherit or otherwise benefit from the murder. Because these two goals are universal among the jurisdictions within the United States, uniformity is also a goal. Thus, like the Uniform Probate Code, a proposed

344. McGovern, *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 107 (1969). *See* Anstine v. Hawkins, 92 Idaho 561, 563, 447 P.2d 677, 679 (1968).

345. Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 715 (1936).

statutory scheme should identify those desirable rules for uniform adoption.[346]

The proper role of the legislature vis-à-vis the judiciary is central in the development of any statute, especially one based, as here, on a combination of property rights and the criminal law. In either context, complex and lengthy statutes are the norm. When combined, legislators and legal writers have the understandable urge to try to provide rules and guidelines for every conceivable situation that may arise. Legislators will also add amendments from time to time to address new situations they have overlooked or to answer a court's narrow interpretation that they believe is unjustified.[347] Complex and poorly drafted statutes may result from this tinkering.

The reason for this confusion and legislative tinkering is the judiciary's reluctance to judicially legislate exceptions to rules promulgated by a legislature. For example, the Kansas Supreme Court stated that because the statute, "in plain language," had set forth the conditions for disinheritance, it could not justifiably minimize the conditions nor read different conditions into the statute.[348] Other courts have agreed when they have asserted that because the statute was on a particular subject,[349] or included express and unambiguous language,[350] it could not enlarge the legislative intent by judicial interpretation. Finally, courts also restrictively interpret the statutes when they consider the statute to be penal in nature and therefore must be strictly construed.[351]

Examples of this judicial behavior appear throughout the United States. In Illinois,[352] Idaho,[353] and Virginia,[354] for example, because the murdering heirs were convicted only of voluntary manslaughter and not murder, as required by the statutes, the courts allowed them to benefit from their actions. In North Carolina, the court, interpreting the statute, allowed the murdering wife to hold a life estate in one-half of the estate by the entireties and awarded the remainder to the husband's heirs.[355] Anoth-

346. Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453, 475-76 (1970).

347. *See* notes 245-48 and accompanying text *supra*.

348. Hogg v. Whitham, 120 Kan. 341, 342, 242 P. 1021, 1022 (1926). In this case, the court ruled that a finding of guilty by a coroner's jury was not a conviction within the meaning of the statute and thus allowed the murderer to inherit. *Id.* at 343, 242 P. at 1022.

349. *In re* Estate of Emerson, 191 Iowa 900, 906, 183 N.W. 327, 329 (1921). Because the statute dealt with only a murdering surviving spouse, the court allowed a son who killed his mother to inherit.

350. Rose v. Rose, 79 N.M. 435, 437, 444 P.2d 762, 764 (1968).

351. Blanks v. Jiggetts, 192 Va. 337, 342, 64 S.E.2d 809, 812 (1951).

352. *In re* Estate of Coslet, 39 Ill. App. 3d 305, 307, 349 N.E.2d 499, 501 (1976). *Cf. In re* Buehnemann's Estate, 25 Ill. App. 3d 1003, 324 N.E.2d 97 (1975) ("murder" was interpreted to include voluntary manslaughter).

353. Anstine v. Hawkins, 92 Idaho 561, 563, 447 P.2d 677, 679 (1968).

354. Life Ins. Co. v. Cashatt, 206 F. Supp. 410, 412-13 (E.D. Va. 1962).

355. Homanich v. Miller, 28 N.C. App. 451, 455, 221 S.E.2d 739, 741 (1976).

er North Carolina court allowed a murderer to inherit because a district court judge's finding of wilfulness in the murder was not a conviction as required under the statute.[356] And, in Oregon, the court was forced to legislate judicially when a son killed his father and the statute required the property to go to the decedent's other heirs.[357] Because no other heirs existed, the statute could not be applied and the court looked to the state's statute on escheat. This statute, however, did not apply because the decedent did have a sister and property would escheat only when there were no lineal descendants or kindred. Therefore, the court gave the property to the sister, creating a wholly new rule of descent in Oregon.[358]

Nevertheless, some states have broadly interpreted narrowly written statutes to effectuate the public policy. In Arkansas, courts have interpreted the word "spouse" to include a beneficiary of insurance proceeds who wrongfully killed her husband[359] and a son who killed his parents.[360] Another example appeared in California in a case in which the court read broadly the statute to include a plea of nolo contendere to disinherit the slayer.[361]

Although some states may broadly interpret the statutory language, many others will not. A solution is needed to help courts and legislatures as well as attorneys and their clients. Other proposed statutes have attempted to provide such a solution. The Wade Model and section 2-803 of the Uniform Probate Code partially succeed, but problems with their schemes remain.

Those jurisdictions that have adopted all or parts of the Wade Model do include two provisions to solve the judicial interpretation problem. One section is broadly written to prohibit "the slayer nor any person claiming through him" to "acquire any property or receive any benefit as the result of the death of the decedent."[362] According to Wade, this provision seeks "to cover every situation that may arise."[363] A second provision more directly guides courts. This section declares that the statute should not be considered penal in nature but should be construed broadly to effect the public policy of preventing a person from benefiting from a wrongdoing.[364] Similarly, section 2-803 of the Uniform Probate Code contains a section dealing with "any other acquisition of property"[365] and directs courts to treat the claiming slayer as the other sections direct.

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356. Lofton v. Lofton, 26 N.C. App. 203, 209, 215 S.E.2d 861, 865 (1975).

357. *In re* Norton's Estate. 175 Or. 115, 117, 151 P.2d 719, 720 (1944).

358. *Id.* at 123-24, 151 P.2d at 722. *See also* McGovern, *Homicide and Succession to Property*, 68 Mich. L. Rev. 65, 73 (1969).

359. Horn v. Cole, 203 Ark. 361, 367, 156 S.W.2d 787, 790 (1941).

360. Wright v. Wright, 248 Ark. 105, 108-09, 449 S.W.2d 952, 953-54 (1970).

361. *In re* McGowan's Estate, 35 Cal. App. 3d 611, 618, 111 Cal. Rptr. 39, 44 (1973).

362. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 753 (1936).

363. *Id.* at 724.

364. *Id.* at 755.

365. UNIFORM PROBATE CODE § 2-803(d).

Both schemes also set forth other provisions specifically directing the courts how to dispose of special types of property interests. If these general provisions do cover all situations that may arise, however, the special provisions are unnecessary. They are necessary only if a legislature doubts the ability of the courts to solve special problems that may arise.

Instead, legislatures should realize that they cannot provide for every possible situation that may arise. Legislatures should therefore enact only general provisions and let the courts deal with the myriad types of problems that may arise. As legislatures are better equipped to handle general policy guidelines to effectuate the public policy, courts are better equipped to solve specific problems in light of statutory guidelines. Courts were created and operate to give individualized treatment to problems and to determine solutions on the basis of facts and arguments in a particular case.[366] Legislatures can and should state general policy. As one writer has stated, a technical approach based on the "logical application of general principles is preferable to solutions based on the vagaries of a badly drafted statute."[367]

Whether the reluctance of legislatures to preempt the role of courts is a reason to explain why neither the Wade Model nor section 2-803 has been universally adopted is unclear. In any event legislatures have not quickly adopted either approach. All or parts of the Wade Model have been enacted in only seven jurisdictions.[368] Similarly, section 2-803 has been enacted by only twelve jurisdictions,[369] and some jurisdictions that have enacted the Uniform Probate Code have either omitted[370] or substantially changed[371] section 2-803.

Legislatures may avoid both schemes for other reasons. The Wade Model, especially, is long and complex. One particularly troublesome section is the one on joint tenancies. The section provides that one-half of the decedent's estate passes to the decedent's estate and the other half passes to the estate when the slayer dies.[372] This provision thus keeps the decedent's estate open for many more years than is necessary. A safeguard is provided; a slayer can obtain a separation or severance or a decree granting partition.[373] But this is a separate step, requiring further legal action at extra cost to both the claimant and extra administrative burden to the courts.

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366. *See* McGovern, *Homicide and Succession to Property*, 68 Mich. L. Rev. 65, 108-09 (1969).

367. *Id.* at 110.

368. *See* the Idaho, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, and Washington statutes, cited in note 216 *supra*.

369. *See* the Alaska, Arizona, Colorado, Hawaii, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, New Mexico, and Utah statutes, cited in note 216 *supra*.

370. *See, e.g.*, the South Dakota statute, cited in note 216 *supra*.

371. *See, e.g.*, the Colorado, Idaho, and Nebraska statutes, cited in note 216 *supra*.

372. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 753-54 (1936).

373. *Id.* at 754.

Instead, the legislature, as suggested by the Uniform Probate Code, can immediately sever the interest of the decedent "so that the share of the decedent passes as his property and the killer has no rights by survivorship."[374] The Uniform Probate Code solved the problem in one step instead of two.

Other problems appear in section 2-803 of the Uniform Probate Code, perhaps due to the long gestation of the Uniform Probate Code during which compromises among various groups may have had to have been made.[375] Besides the apparent lack of need to include separate sections for intestate and testate succession, joint tenancies, and insurance benefits, the requirement of a "felonious" killing as well as the role of a probate or other civil court cause concern. First, by using the term "felonious," operation of section 2-803 is limited to the criminal law definition of felony.[376] In addition, by requiring both a felonious and intentional killing, further problems appear, especially regarding the crime of involuntary manslaughter. Although a jurisdiction's criminal law may consider involuntary manslaughter a felony, the element of intent is lacking in the crime of involuntary manslaughter. A person guilty of involuntary manslaughter, therefore, may be able to inherit even if that person's guilt was the result of a plea bargain.[377] Therefore, the Wade Model's requirement of a "wilful and unlawful" killing may be better.

Finally, legislatures may object to the grant of power given noncriminal courts to determine a slayer's "guilt" by a preponderance of the evidence before a final judgment of conviction in the criminal courts.[378] This provision does protect against situations in which a slayer commits suicide after killing the decedent. Because some statutes require a conviction, courts may not apply the statute and allow the slayer's heirs to benefit from the wrongdoing. If, however, a slayer is acquitted in criminal court, a probate court can still "convict" the slayer using only the standard of preponderance of the evidence and deny him or her the inheritance.[379]

Therefore, the need for a new statutory scheme is apparent. Such a scheme can borrow from the attempts made by Wade and the drafters of the Uniform Probate Code. Specifically, provisions addressing innocent third parties, the nature of the civil proceedings, the statute's construction, and severability are important and should be maintained. More important are the statements of general rules regarding the statute's application and specifying how the property interest should be treated by the courts. The following provisions are suggested.

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374. UNIFORM PROBATE CODE § 2-803(b).

375. *See* notes 235-36 and accompanying text *supra*.

376. Zartman, *An Illinois Critique of the UPC*, 1970 U. ILL. L. F. 413, 433-34.

377. In addition, accidental manslaughter, justifiable homicide and the defense of insanity are not included within the meaning of Section 2-803. UNIFORM PROBATE CODE PRACTICE MANUAL § 2.17 (1972).

378. UNIFORM PROBATE CODE § 2-803(e).

379. Zartman, *An Illinois Critique of the UPC*, 1970 U. ILL. L. F. 413, 434.

> Section 1: Any person who wilfully and unlawfully causes the death of another person shall not be entitled to receive or acquire any interest in property as beneficiary or otherwise. This act applies to any present interest, future interest, insurance policy, contractual obligation, or other form of ownership. The slayer shall be deemed to have predeceased the decedent. Property held jointly will be severed so that the slayer shall not have rights by survivorship and the decedent's share shall pass to his or her other heirs.

This section has taken the best of both the Wade Model and section 2-803, while recognizing the need to state general guidelines. As previously explained, legislatures should provide only general guidelines, and courts should be allowed to interpret these provisions to solve specific problems. The intent, therefore, is for courts to interpret these provisions broadly.[380]

Specifically, "any person" can be broadly interpreted[381] to include any of the interested parties indentified as part of most of the currently existing statutory schemes.[382] "Any person" can easily refer to a surviving spouse, heir, devisee, joint owner, and beneficiary as well as to a parent who kills a child and slayers who commit suicide. Similarly, the identification of applicable property interests is also broad. Included could be the types of property interests specified as well as any other type of interest, from remainders to powers of appointment.

The phrase "wilfully and unlawfully" is used instead of "feloniously and intentionally" to avoid the problem of the criminal law definition of felony. Also, this proposed phrase avoids stating the many different criminal actions, as done by many legislatures. Under this requirement, a slayer must have intended to cause the death of the decedent and not have acted lawfully. Therefore, a person who is guilty of involuntary manslaughter or not guilty by reason of insanity can receive or acquire a property interest from the decedent.[383] In addition, justifiable, excusable,

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380. *See* discussion of Proposed Section 4, *infra*.

381. *See, e.g.*, Bauman v. Hogue, 160 Ohio St. 296, 116 N.E.2d 439 (1953). In this case, the court interpreted "no person" to include a husband as surviving spouse. *Id.* at 299, 116 N.E.2d at 441.

The term "any" is, by its nature, broad in meaning. *See, e.g.*, New York Life Ins. Co. v. Cawthorne, 48 Cal. App. 3d 651, 121 Cal. Rptr. 808 (1975). Here, the court made "any" applicable to inheritance, bequests, proceeds of insurance policies, and joint tenancies. *Id.* at 654, 121 Cal. Rptr. at 810. *See* Bailey v. Retirement Bd., 51 Ill. App. 3d 433, 366 N.E.2d 966 (1977).

By using broad language such as "any," the legislative intent may be given a broad interpretation. Linguistically, this intent is even more clear because the word "any" is general in nature. *See* Lawler, *Any Questions?, in* 3 SYNTAX AND SEMANTICS 62 (1971); Lakoff, *Some Reasons Why There Can't Be Any Some-Any Rule*, 45 LANGUAGE 608, 609 n.1 (1969).

382. *See* Appendix II *infra* and previous discussion of interested parties *supra*.

383. *See, e.g.*, Davis v. Aetna Life Ins. Co., 279 F.2d 304 (9th cir. 1960) (slayer allowed to recover insurance benefits even though convicted of involuntary manslaughter); Prudential Ins. Co. v. Doane, 339 F. Supp. 1240 (E.D. Pa. 1972) ("wilful and unlawful" did not include involuntary manslaughter); Quick v. United Benefit Life Ins. Co., 287 N.C. 47, 213 S.E.2d 563 (1975) (involuntary manslaughter not considered a wilful killing); Petrillo v. Hanely, 29 D.C. 512 (Pa. 1936) ("wilful and unlawful" does not apply to a plea of insanity).

and accidental homicides and homicides resulting from self-defense are not included within the operation of this section.[384]

After "wilfully and unlawfully," the section states that the slayer must have "caused the death of another person." As with the word "any," the word "cause" can be broadly construed. Therefore, legislatures do not need to identify every type of criminal action, from murder, murder in the first and second degrees, manslaughter, voluntary manslaughter, and felony murder to participation in the slaying as a principal, accessory, conspirator, or procurer. In addition, the section can apply whether the slayer is brought to trial, pleads guilty, or pleads nolo contendere.

The treatment specified in the section is split between property interests owned totally or jointly by the decedent. For most property interests, the slayer is deemed to have predeceased the decedent.[385] Property held jointly, however, must be treated differently because of the law of survivorship. If the slayer is deemed to have predeceased the decedent, the decedent's estate will take both the decedent's and the slayer's share. Although this results in no benefit to the slayer, legitimately held property interests by a slayer should not be denied the slayer in contravention of the constitutional prohibitions against forfeitures.[386] Therefore, jointly held interests are severed, the slayer retains ownership of his interest, and the decedent's interest passes to his estate and not to the slayer.

> Section 2: A final judgment of conviction of a wilful and unlawful slaying is conclusive for purposes of this act. The record of the slayer's conviction shall be admissible for or against a claimant of a property interest in a civil proceeding under this act.

This section is taken from section 2-803 of the Uniform Probate Code. It is appropriate and useful because it provides a mechanism for determining the transfer of property interests if a final judgment of conviction does not occur. The requirement of a "final judgment" ensures that the fact of the conviction will not be used in evidence until after all appeals are exhausted.[387] It also ensures that the question of the slayer's guilt or innocence will not be relitigated during the civil proceeding. Unlike the Wade Model, which merely states that the record of a conviction is admissible,[388] the Uniform Probate Code's section litigates only the ques-

384. *See, e.g.*, Henry v. Toney, 211 Miss. 93, 50 So. 2d 921 (1951) (wilful means anything wilful and without justification); *In re* Pinder's Estate, 61 D.C. 193 (Pa. 1948) (wilful and unlawful does not include the defense of self-defense). *See also* Bolich, *Acts Barring Property Rights*, 40 N.C. REV. 175, 193 (1962); Note, *Decedent's Estate—Forfeitures of Property Rights by Slayers*, 12 WAKE FOREST L. REV. 448, 450-51 (1976).

385. *See* McGovern, *Homicide and Succession to Property*, 68 MICH. L. REV. 65, 73 (1969).

386. The slayer should not have to forfeit what is his or hers. Porth v. Porth, 3 N.C. App. 485, 165 S.E.2d 508 (1969). *See* Oleff v. Hodapp, 129 Ohio St. 432, 195 N.E. 838 (1935); Hamer v. Kinnan, 16 D.C. 395 (1931). *See also*, Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 728 (1936).

387. Tarlo's Estate, 315 Pa. 321, 172 A. 139 (1934); Blanding v. Sayles, 23 R. I. 226, 49 A. 992 (1901).

388. Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 755 (1936).

tion of the slayer's right to benefit from his or her wrongdoing.[389] Therefore, a civil court can investigate a transfer of property interests when a technicality may have led to an acquittal or a reversal of a conviction.[390]

The second part of the section allows the record of the conviction to be admitted into evidence for the civil proceeding. This is a statutory exception to the rule that such criminal records are not admissible in civil proceedings to prove a person's guilt or innocence.[391] This section helps to carry out the legislative intent and recognizes the growing tendency of courts to admit a criminal record in a civil proceeding unless excluded by statute.[392] The record would include the indictment, the jury's verdict, the court's judgment and sentence, and any appeal of a court's decision.[393]

> Section 3: This act does not affect the rights of any party who, before rights under this act have been adjudicated, acquires from the slayer for value and without notice an interest in property that the slayer would have acquired except for the operation of this act. The slayer is liable for the amount of the proceeds or the value of the property interest. Any insurance company, financial intermediary, or other obligor, making payment according to the terms of its policy or obligation, is not liable under this act, unless, prior to payment, it has received at home office or principal address written notice of a claim under this act.

Like section 2, this section also is taken from the Uniform Probate Code.[394] Besides grammatical changes to better state the propositions, the only real change is the use of the word "acquires" for "purchases." "Acquires" is a broader term and can be interpreted more generally. Also, the term "financial intermediary" is substituted for "bank" and includes savings and loan associations, credit unions, and other organizations. The operation of this type of section was upheld years ago by a court in Oklahoma which ruled that a wife's heirs were entitled to the property purchased with her funds by her husband who killed her.[395]

> Section 4: This act shall not be considered penal in nature. The provision of this act shall be construed broadly to effect the policy of this state that no person shall be allowed to benefit from his or her own wrong.
>
> Section 5: The provisions of this act are declared severable. If any

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389. *In re* Kravitz Estate, 418 Pa. 319, 329, 211 A.2d 443, 448 (1965).

390. Thus, the result in Barnes v. Cooper, 204 Ark. 118, 161 S.W.2d 8 (1942), would not have occurred. In that case, although a wife killed her husband and then committed suicide, her heirs were allowed to claim her dower rights because she was not convicted as required by the state's statute.

391. *See, e.g.*, Quick v. United Benefit Life Ins. Co., 287 N.C. 47, 213 S.E.2d 563 (1975).

392. Pennsylvania Turnpike Comm'n v. United States Fidelity Guaranty Co., 412 Pa. 222, 226, 194 A.2d 423, 426 (1963). *See* Schindler v. Royal Ins. Co., 258 N.Y. 310, 179 N.E. 711 (1932). *See also* Note, *Developments in the Law of Res Judicata*, 65 HARV. L. REV. 818, 880 (1952).

393. *See In re* Kravitz Estate, 418 Pa. 319, 328, 211 A.2d 443, 448 (1965).

394. UNIFORM PROBATE CODE § 2-803(f).

395. Exchange Trust Co. v. Godfrey, 128 Okla. 108, 261 P. 197 (1927).

provision of this act, or its application to any person or circumstance, is held invalid, other provisions or applications shall not be affected.

These two last sections are adopted from the Wade Model. Section 4 is the heart of this proposed statutory scheme. With this section, courts can and should broadly construe all previous provisions to effectuate the legislature's statement of public policy. This is proper because, as explained by Wade, this type of statute is not penal but equitable in nature; rather than taking property from a person, a court is determining whether that person should be allowed to acquire the property.[396]

CONCLUSION

Interrelated legal concerns are involved when courts, legislatures, and legal practitioners confront the problem of a murdering heir. Substantive criminal law defines the heir's actions toward the decedent. Property law delineates the possession and transfer of property interests by the heirs and decedents. Wills and trusts as well as insurance policies and contracts are involved as law and equity courts attempt to solve resulting problems. Throughout, courts and legislatures within the fifty states and the District of Columbia must define their roles and the process to resolve these problems.

In general, the law within the fifty-one American jurisdictions appears to fulfill the concomitant public policies that a person should not profit from a wrongdoing and that a decedent's intent should be manifested by court action. Thus, courts should not allow a transfer of property to an heir, devisee, joint owner, or beneficiary of any property interest who has unlawfully and intentionally killed a decedent.

The courts and legislatures, however, have diluted, convoluted, and confused the operation of the law. In some jurisdictions, a murderer will be forbidden to inherit only if he or she was convicted. In other jurisdictions, a person convicted of voluntary manslaughter will be allowed to inherit. And, in other jurisdictions, although the law prohibits heirs and devisees to inherit, insurance beneficiaries who kill an insured will inherit.

The solution to this continuing confusion is simple. Either the courts or the legislatures can resolve the issue and effectuate a clear statement of public policy. Courts should have the courage to apply equitable principles and public policy consistently. The judge in *Riggs v. Palmer* had this courage—a courage to lead the legal community, the courage to apply equitable principles to reach a more reasonable decision.

Courts, of course, are reluctant to use the power they possess. As co-equal partners in government with the legislative branch, courts defer to the legislature to create statutes stating the public policy and providing

396. *See* Wade, *Acquisition of Property by Willfully Killing Another—A Statutory Solution*, 49 HARV. L. REV. 715, 751 (1936).

guidelines to the courts. Therefore, the most meaningful forum for change is the legislative.

Legislatures need to examine their currently existing statutes and how they are being interpreted by the courts within the jurisdiction. If the courts are reluctant to read exceptions into the statutes or to interpret the statutory language broadly to include fact situations falling within the public policy, the legislature must amend the statute. A workable statutory solution would be one that is broadly stated and directs courts to broadly interpret the statutory language. The statute should also provide for the judicial process for determining the rights of the interested parties and delineate the rights of innocent third parties. Only when the legislatures begin to examine the act will this area of the law fulfill its legal purpose—to prohibit wrongdoers from benefiting from their acts.

APPENDIX I
PROPOSED STATUTORY SCHEME

Section 1: Any person who wilfully and unlawfully causes the death of another person shall not be entitled to receive or acquire any interest in property as beneficiary or otherwise. This act applies to any present interest, future interest, insurance policy, contractual obligation, or other form of ownership. The slayer shall be deemed to have predeceased the decedent. Property held jointly will be severed so that the slayer shall not have rights of survivorship and the decedent's share shall pass to his or her other heirs.

Section 2: A final judgment of conviction of a wilful and unlawful slaying is conclusive for purposes of this act. The record of the slayer's conviction shall be admissible for or against a claimant of a property interest in a civil proceeding under this act.

Section 3: This act does not affect the rights of any party who, before rights under this act have been adjudicated, acquires from the slayer for value and without notice an interest in property that the slayer would have acquired except for the operation of this act. The slayer is liable for the amount of the proceeds or the value of the property interest. Any insurance company, financial intermediary, or other obligor, is not liable under this act, unless, prior to payment, it has received at its home office or principal address written notice of a claim under this act.

Section 4: This act shall not be considered penal in nature. The provisions of this act shall be construed broadly to effect the policy of this state that no person shall be allowed to benefit from his or her own wrong.

Section 5: The provisions of this act are declared severable. If any provision of this act, or its application to any person or circumstance, is held invalid, other provisions or applications stall not be affected.

APPENDIX II
ANALYSIS OF CURRENTLY EXISTING STATUTORY SCHEMES

KEY

A—Any person; any portion
AA—Aid and Abet
Ac—Accessory
AcBF—Accessory before the fact
Acci—Accidents
AFC—Accusation found calumnious
Ag—Acquittal in conclusive evidence
An—Annuity
Att—Attempt to kill
B—Beneficiary
Bd—Bond
BO—Benevolent organization
Brd—Broadly construe
C—Conviction is conclusive evidence
CF—Capital felony
Ch—Child; children
CL—Common law determines outcome
CP—Community property
CR—Creditor's rights to property
Cs—Cause; Cause death
Csp—Conspiracy
CsSui—Cause suicide
CT—Constructive trust
D—Devisee; decedent
DU—Declaration of unworthiness
Eq—Equity determines outcome
Es—Estate
F&I—Feloniously, intentionally
F-1—Felony 1
F-2—Felony 2
FDM—Failure to denounce murderer
FM—Cause death during commission of felony
G—General Prop.
H—Heir
Hb—Husband
I—Intent
Ins—Insured
JT—Joint tenants
K—Kill
KL—Killer liable
LE—Life expectancy
LI—Life insurance
M—Murder
M-1—Murder, first degree
M-2—Murder, second degree
MSL—Manslaughter
Mtg —Mortgage
Mx—Mixed property
n—Not entitled
N—Notice
NA—Not affect rights
NBMJ—Not bring murderer to justice
NC—Nolo contendere
NCB—No corruption of blood
O—Other
OH—Other heirs
P—Predeceased
Pd—Pardoned
PE—Preponderance of the evidence
Pens—Pension
PG—Plea of guilty
PL—Personal property
PNL—Penal
~~PNL~~—Not penal
Pr—Principle
Pro—Procure
PS—Profit sharing
Pt—Part or share
R—Real property
RdAdm—Record of conviction admissible
RE—Real estate
Res—Restitution
S—Severance
SD—Self defense
Sen—Sentenced
Si—Situs of real property
SL—Slayer
Sp—Surviving Spouse
T—Trust; proceeds placed in trust
TE—Tenant by entirety
Val if no Fd—Valid if no fraud
Vd—Void
VM—Voluntary manslaughter
W&U—Wilful and unlawful
WF—Wife
2d—Second or secondary
3d—A third person

APPENDIX II
ANALYSIS OF CURRENTLY EXISTING STATUTORY SCHEMES

Jurisdiction	Statutory Scheme	Year Enacted	Construction	Interested Parties: Generally	Interested Parties: Parent Kills Child	Interested Parties: Slayer Suicide
ALA.	None					
ALAS.	UPC	1972		Sp;H;D;Jt;B		
ARIZ.	UPC	1974		Sp;H;D;Jt;B		
ARK.	single	1939		Sp		
CAL.	Single	1905; am. 1931, 1955, 1963		A		
COLO.	UPC	1973		Sp;H;D;Jt;B		
CONN.	single	1965; am. 1967, 1971		A		
DEL.	None					
D.C.	multiple	1965		A		
FLA.	single	1973		A		
GA.	multiple	1952		A		
HAW.	UPC	1976		Sp;H;D;Jt;B		
IDAHO	multiple	1971	~~PNL~~;Brd	A		
ILL.	multiple	1939		A		
IND.	single	1953; am. 1978		A		
IOWA	single	1963		A;B		
KAN.	single	1939; am. 1970		A		
KY.	single			H;Hb;Wf;B;Jt		
LA.	multiple	1804, 1808, 1825; am. 1870				
ME.	none					
MD.	single	1809; am. 1888, 1904, 1912, 1924, 1939, 1951		A		
MASS.	None					
MICH.	UPC	1978		Sp;H;D;Jt;B		
MINN.	UPC	1975		Sp;H;D;Jt;B		
MISS.	multiple	1892; am. 1917, 1942		A		
MO.	None					

BFPV	Obligors	Criminal Action	Exclusions	Probate Court	Recording
NA;KL	NA;N	F&L;K		C;PE	
NA;KL	NA;N	F&I;K		C;PE	
		K;M-1;M-2		C	
		M;VM;FM;U&I;Cs		C;Aq	
NA;KL	NA;N	K;PG;NC;M-1 M-2;MSL		C;PE	
		Pr;Ac;M		C;Eq	Si
NA		F;M;MSL		C	
		M		C	
	NA;N	I;K;Csp;Pro	Acci;S;D	C	
NA;KL	NA;N	F&I;K;M;VM		C;PE	
NA;KL	NA;N	W&U;K;Pr;AcBf		C;RdAdm	
		M		C	
NA		M;VM;CsSui		C	
		F;K;Cs;Pro			
		F;K;Pro		C	
		K		C	
Val if no Fd;Mtg-NA		Pd;K;Att;NBMJ; AFC;FDM	D forgives	C;DU;Oh sue	
NA;KL	NA;N	F&I;K;AA		C;PE	
NA;KL	NA;N	F&I;K		C;PE	
NA		W;Cs;Pro			

Jurisdiction	Statutory Scheme	Year Enacted	Construction	Interested Parties: Generally	Parent Kills Child	Slayer Suicide
MONT.	UPC	1975		Sp;H;D;Jt;B		
NEB.	UPC	1974		Sp;H;D;Jt;B		
NEV.	single	1945		A		
N.H.	None					
N.M.	UPC;single	1975; 1963		Sp;H;D;Jt;B		
N.J.	UPC	1977		Sp;H;D;Jt;B		
N.Y.	none					
N.C.	multiple	1961		A		
N.D.	UPC	1975		Sp;H;D;Jt;B		
OHIO	Single	1975; am. 1976		A		
OKLA.	single	1915; am. 1963, 1975		A		
ORE.	multiple			A		
PA.	multiple	1941; am. 1947, 1972	~~PNL~~	A		
R.I.	multiple	1962	~~PNL~~	A		
S.C.	single	1924; am. 1932, 1942, 1952, 1962		A	n;Ch	
S.D.	multiple	1937; am. 1939, 1976	~~PNL~~; Brd			
TENN.	single	1976		A		
TEX.	multiple	1955; 1951		B		
UTAH	UPC	1975		SP;H;D;Jt;B		
VA.	single	1787; am. 1971		A		
VT.	single	1950; am. 1962, 1968		A		
WASH.	multiple	1955; am. 1967		T		
W. VA.	single	1931		A		
WIS.	None					
WYO.	single	1915; am. 1920, 1931, 1945, 1957		A;B		

BFPV	Obligors	Criminal Action	Exclusions	Probate Court	Recording
NA;KL	NA;N	F&I;K		C;PE	
NA;KL	NA;N	F&I;K;AA		C;PE	
		M		C	
NA;KL	NA;N	F&I;K;M;CF;F-1; F-2		C;PE	
NA;KL	NA;N	I;K		C;PE	
NA;KL;T	NA;N	Pr;AcBF;W&U;PG; NC;Pro;K;Die/Sui		C;RdAdm	
NA;KL	NA;N	F&I;K		C;PE	
NA;KL		PG;M;VM		C	
	I;NA;N	M-1;M-2;MSL-1; K;Cs;Pro		C	
NA;KL;T	I;NA;N	I;K;Pro		C;PE	
NA;KL;T	NA;N	Pr;AcBF;W&U;K		C;PE	
NA;KL;T	NA;N	W&U;K;Pro		RdAdm	
		U;K	IVM	C	
		I;U;K;Pro		RdAdm	
		K;Consp;Pro	Acci;SD		
		W;Cs;Pr;Ac		C;Sen	
		R&I;K		C;PE	
	NA;N	M		C	
		K;I&U		C;RdAdm	
NA;KL	NA;N	Pr;AcBF;W&U;K		RdAdm	
		F;K;Csp			
	NA;N	F;K;Cs;Pro			

	Forms of Transfers					
Jurisdiction	Intestate	Wills	Contracts	Deeds	Generally	Other Property
ALA.						
ALAS.	n;P	n;P	Bd;LI;O;n;P			n;P
ARIZ.	n;P	n;P	Bd;LI;O;n;P			n;P
ARK.						
CAL.		n;P			A;n;P	
COLO.	n;P	n;P	Bd;LI;O;n;P			n;P
CONN.	n	n;P	B;n;P			CL
DEL.						
D.C.	n;P	n;P	I;Vd			
FLA.	n;P	n;P				
GA.		n;P	I;M;VM;Csp;PG; n;OH	n;P	R;PL;MX;O;n;P	
HAW.	n;P	n;P	Bd;LI;O;n;P			n;P
IDAHO	n;P	n;P	LI;Es or2dB		R;PL;CP	
ILL.	n;P	Vd;P			A;n;P	
IND.					A;CT	
IOWA	n;OH	n;OH	I;n		A	
KAN.	n	n			A	n
KY.	n;OH	n;OH	I;n;OH		A	
LA.	n	n				
ME.						
MD.					NCB	
MASS.						
MICH.	n;P	n;P	B;LI;O;n;P			n;P
MINN.	n;P	n;P	B;LI;O;n;P			n;P
MISS.		n;Vd;P			R;PL;n;P	
MO.						

	Property				
	Joint Tenancy				
Statutory Share	SL; D	SL; D; 3d	Tenancy by Entirety	Dower/Courtesy	Intermediate Estate
	n;S;G		n;S;G		
	n;S;G				
				n;R;PL	
	n;S				
	n;S				n
	n;S;R;PL;O		R;PL;O;n;P		
n;P					
n					
	n				
	n;OH				
	S		S		
	s				

Jurisdiction	Forms of Transfers: Intestate	Wills	Contracts	Deeds	Generally	Other Property
MONT.	n;P	n;P	B;LI;O;n;P			n;P
NEB.	n;P	n;P	B;LI;O;n;P			n;P
NEV.					A;n;O	
N.H.						
N.M.	n;P	n;P	Bd;LI;O;n;P		R;PL;MX	n;P
N.J.	n;P	n;P	Bd;LI;O;n;P			n;P
N.Y.						
N.C.	n;P	n;P	I;An;P; to D's Es if D=B		R;PL	
N.D.	n;P	n;P	Bd;LI;O;n;P			n;P
OHIO			I;n;P;CT		A;n;CT	
OKLA.	n;OH	n;OH	I;n;OH		A	
ORE.	P	P	LI;Pens;PS;BO;2d B or D's Es; to D's Es if D=B		A;n	
PA.	P	P	LI;JtLI; to D's Es if D=B		A;n;R;PL	
R.I.	P	P	LI;P; to D's Es if D=B		R;PL;n	
S.C.	n;Es	n;Es	I;n;Es			n;Es
S.D.	P	P n		n	R;PL;Int;n	
TENN.					A;Pt;R;PL	n
TEX.			LI;n;DH		NCB	
UTAH	n;P	n;P	B;LI;n;P;D			n;P
VA.	n	n	LI;n;P			
VT.					A;Pt;n	
WASH.	n;P	n;P			A;n;P	
W. VA.	n;P	n;P	I;n;P		R;PL	
WIS.						
WYO.	n;OH	n;OH	I;n;OH			

	Property				
	Joint Tenancy				
Statutory Share	SL; D	SL; D; 3d	Tenancy by Entirety	Dower/Courtesy	Intermediate Estate
	S				
	S		S		
	S;n		S		
	S		S		
n	S;K's share to D at death;CR	D's pt. to D's Es; SL's pt to SL for life	1/2 to D, 1/2 to SL		
	S		S		
	n;O				
	1/2 to SL for life, then to D's H.	To SL for life then to 3d		P	
P	1/2 to SL for life then to D's H	To SL for life then to D's Es	1/2 to SL for life then to D's H		
P	1/2 to D's Es, 1/2 to SL for life, then D's Es	To D's Es; or OJT; or 1/2 to D's Es and 1/2 to SL for life then to D's Es	1/2 to D's Es; 1/2 to SL for life, then to D's Es	P	
P	1/2 to D's Es; 1/2 to D's Es at SL's death				
	S		S		
	1/2 to D's Es; 1/2 to D's Es at SL's death	to D's Es; or 1/2 to D's Es and 1/2 to D's Es at SL's death			

Jurisdiction	Trust Property	Interest to Be Divested	Interest Subject To Special Class	Remainders	Vested Remainder
ALA.					
ALAS.					
ARIZ.					
ARK.					
CAL.					
COLO.					
CONN.					
DEL.					
D.C.				n;P	
FLA.					
GA.					
HAW.					
IDAHO		P		VR=Es or ed; CR=P	
ILL.					
IND.					
IOWA					
KAN.					
KY.					
LA.					
ME.					
MD.					
MASS.					
MICH.					
MINN.					
MISS.					
MO.					

Vested Remainder or Reversion with Le in 3d	Contingent Remainder	Reversion	Executory	Power of Appointment
				P
				P
				P
		n;P	n;P	
			P	
		Es or 3d	P	P;Es or class
				n;P
				n;P

Jurisdiction	Trust Property	Interest to Be Divested	Interest Subject To Special Class	Remainders	Vested Remainder
MONT.					
NEB.					
NEV.					
N.H.					
N.M.					
N.J.					
N.Y.					
N.C.		To SL for SL's life	to class		D for D's LE
N.D.					
OHIO					
OKLA.					
ORE.	P		to class		D's H for D's LE
PA.		To SL for life or D's LE	to class		D's H for D's LE
R.I.		To SL for life or D's LE	to class		D's Es for D's LE
S.C.					n;Es
S.D.					
TENN.					
TEX.					
UTAH					
VA.					
VT.					
WASH.		to SL for life or D's LE, then P			to D's Es for D's LE
W. VA.					
WIS.					
WYO.					

Vested Remainder or Reversion with Le in 3d	Contingent Remainder	Reversion	Executory	Power of Appointment
				n;P
				n;P
				n;P
				n;P
To 3d for D's LE	SL;P	D for D's LE	SL;P	P
				n;P
To 3d for D's LE	SL;P	D's H for D's LE	SL;P	P
	P	D's Es for D's LE	P	P
To Bd for D's LE	P	D's Es for D's LE		P
	n;Es			
				n;P
	P	to D's Es for D's LE	P	P

Jurisdiction	Present or Remainder Subject to Power of Appointment or Revocation	Community Estates	Future Interests
ALA.			
ALAS.			
ARIZ.			
ARK.			
CAL.			
COLO.			
CONN.			
DEL.			
D.C.			
FLA.			
GA.			
HAW.			
IDAHO			
ILL.			
IND.			
IOWA			
KAN.			
KY.			
LA.			
ME.			
MD.			
MASS.			
MICH.			
MINN.			
MISS.			
MO.			

Jurisdiction	Present or Remainder Subject to Power of Appointment or Revocation	Community Estates	Future Interests
MONT.			
NEB.			
NEV.			
N.H.			
N.M.		n	n
N.J.			
N.Y.			
N.C.	to D's Es		
N.D.			
OHIO			
OKLA.			
ORE.	to D's Es		
PA.	to D's Es		
R.I.	to D's Es		
S.C.			
S.D.			
TENN.			
TEX.			
UTAH			
VA.			
VT.			
WASH.	to D's Es or class		P
W.VA.			
WIS.			
WYO.			